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**Briefings on How To Use the Federal Register—**  
For information on briefings in Washington, DC, see  
announcement on the inside cover of this issue.

# Federal Register



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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.
- 
- WHEN:** November 20, at 9 a.m.
- WHERE:** National Archives and Records Administration,  
Room 410, 8th and Pennsylvania  
Avenue NW., Washington, DC.
- RESERVATIONS:** Robert D. Fox, 202-523-5239.



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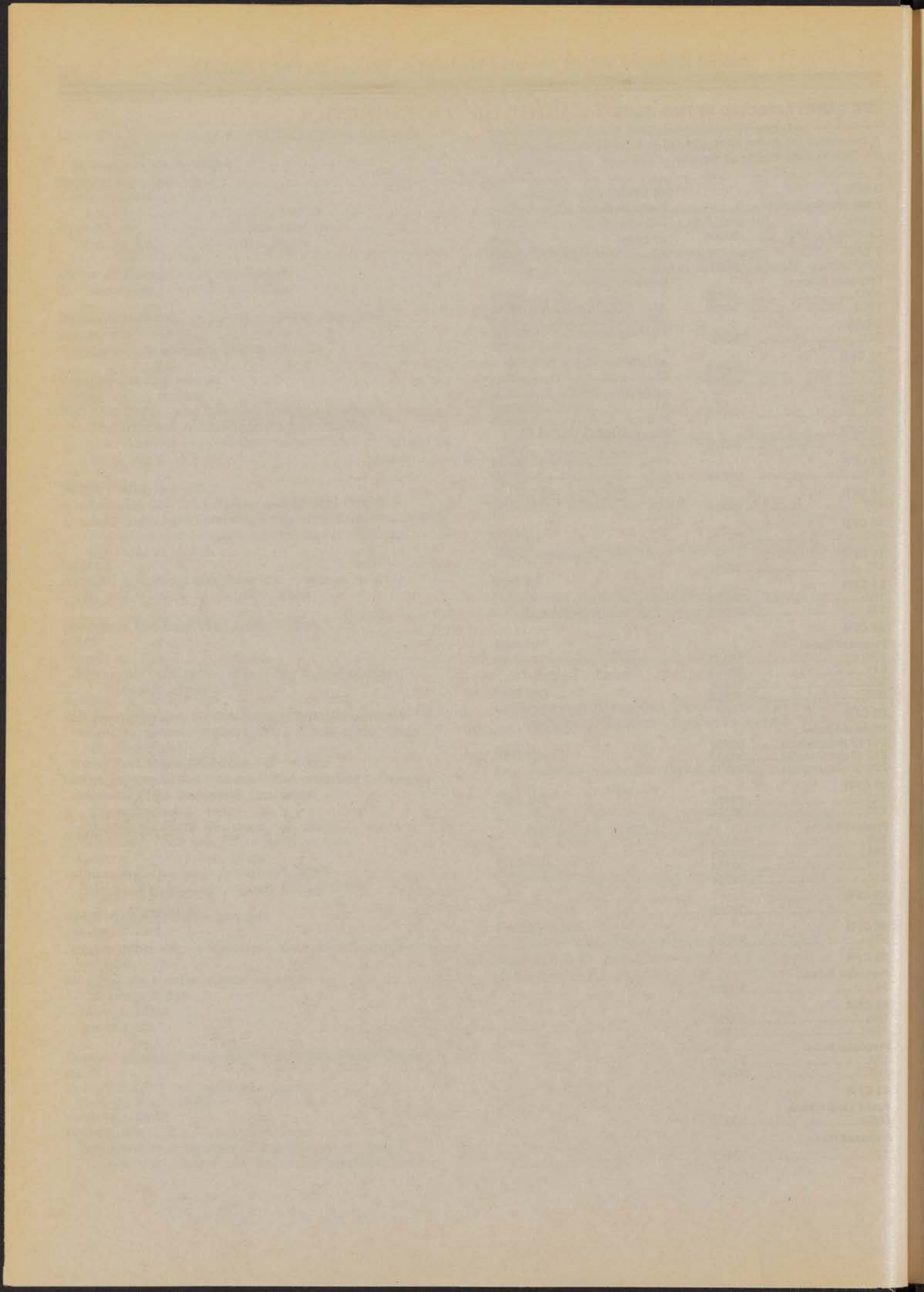
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# Presidential Documents

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Order of October 20, 1987

The President

## Emergency Deficit Control Measures for Fiscal Year 1988

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) (hereafter referred to as "the Act"), I hereby order that the following actions be taken immediately to implement the sequestrations and reductions determined by the Director of the Office of Management and Budget in his report dated October 20, 1987, under section 251 of the Act:

- (1) Each automatic spending increase that would, but for the provisions of the Act, take effect during fiscal year 1988 is suspended as provided in section 252. The programs with such automatic spending increases subject to reduction in this manner, specified by account title, are: National Wool Act; Special milk program; and Vocational rehabilitation.
- (2) The following are sequestered as provided in section 252: new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended; and obligation limitations.
- (3) For accounts making payments otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the remainder of the fiscal year to the level of resources available after sequester.
- (4) For accounts making commitments for guaranteed loans and obligations for direct loans as authorized by substantive law, the head of each Department or agency is directed to reduce the level of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified in the Director of the Office of Management and Budget's determination of October 20, 1987.
- (5) Each Department or agency head may, to the extent not otherwise prohibited by law, use existing authority to deobligate balances of budgetary resources as necessary to apply the required reduction or sequestration in as uniform a manner as possible for any person or other recipient entitled to payments under any formula-driven calculations specified in the substantive law. Deobligations may include budgetary resources obligations for which checks have not been issued or funds not otherwise disbursed (funds obligated but unexpended).

In accordance with section 252(a)(4)(A), amounts suspended or sequestered under this Order shall be withheld from obligation or expenditure pending the issuance of a final order under section 252(b).

This Order shall be reported to the Congress and shall be published in the Federal Register.

*Ronald Reagan*

THE WHITE HOUSE,  
October 20, 1987.

[FR Doc. 87-24555

Filed 10-20-87; 11:22 am]

Billing code 3195-01-M



# Rules and Regulations

Federal Register

Vol. 52, No. 203

Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

#### 7 CFR Part 1962

##### Security Servicing

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** The Farmers Home Administration (FmHA) corrects a final rule published March 23, 1987 (52 FR 9111). In the revision of FmHA's Single Family Housing regulations pertaining to security servicing, a change was made regarding FmHA's administrative handling of a Proof of Claim when a borrower files a petition for bankruptcy. A concomitant change should have been made in the appropriate portion of a farmer program regulation to ensure consistency. The intended effect of this procedural change is to bring all regulations pertaining to the administrative handling of a Proof of Claim by county offices in line with each other.

**FOR FURTHER INFORMATION CONTACT:** David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agricultural Building, Washington, DC 20250, telephone (202) 382-1452.

#### SUPPLEMENTARY INFORMATION:

##### Programs Affected

This change affects the following FmHA programs as listed in the catalog of Federal Domestic Assistance

- 10.404 Emergency Loans
- 10.406 Farm Operating Loans
- 10.407 Farm Ownership Loans
- 10.416 Soil and Water Loans

#### List of Subjects in 7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

The following correction is made to FR Doc 87-6232 appearing on pages 9111 to 9116 in the issue of March 23, 1987.

#### PART 1962—PERSONAL PROPERTY

1. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart A—Servicing and Liquidation of Chattel Security

2. Section 1962.47 (b)(2)(i) is revised to read as follows:

##### § 1962.47 Bankruptcy and insolvency.

- (b) \* \* \*
- (2) \* \* \*
- (i) Form FmHA 1965-14, "Proof of Claim," or other form approved by OGC will be executed. The proof of claim will cover all indebtedness to FmHA, except any judgments obtained by a U.S. Attorney. Proofs of Claim will be handled according to a State Supplement approved by OGC. If the proof of claim is submitted to OGC, the State Director will identify for OGC in memorandum (not on the proof of claim) the security which was taken for each FmHA loan.

Dated: September 4, 1987.

Eric P. Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87-24390 Filed 10-20-87; 8:45 am]

BILLING CODE 3410-07-M

#### Food Safety and Inspection Service

##### 9 CFR Part 381

[Docket No. 85-036F]

#### Facility and Equipment Requirements for Streamlined Inspection System for Broilers and Cornish Game Hens

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection

regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. The final rule specifies certain critical dimensions for facilities at the inspection and reinspection stations for SIS that the Agency has concluded are appropriate and essential to assure optimum inspection performance under the new system. It requires the installation of an appropriately designed, adjustable platform at each inspector's station and of carcass selection devices known as selectors or "kickouts" at inspection stations. The final rule also requires equipment appropriate to ensure adequate lighting, handwashing, and the handling of carcasses and parts, including the proper disposal of condemned carcasses and parts.

**EFFECTIVE DATE:** December 21, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447-3219.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule". The rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets. Although the final rule imposes certain facility and equipment requirements upon establishments operating under SIS, the costs of those requirements should be minor.

#### Effect of Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as



defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule imposes certain facility and equipment requirements upon establishments operating under SIS. However, the costs related to complying with these requirements are expected to be minor. Furthermore, those costs will be counterbalanced by positive economic benefits such as reduced overtime inspection because of fewer inspectors, reduced workspace, and increased productivity by maintaining optimal line speeds.

#### Background

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) requires, among other things, that the Secretary of Agriculture, through appointed inspectors, conduct a post-mortem inspection of the carcass of each bird processed in every official establishment that processes poultry for commerce or that is otherwise subject to the Act, and condemn all products found to be adulterated. The PPIA also requires FSIS to inspect premises, facilities, and equipment to ensure that they are clean and sanitary and will not result in the processing of adulterated products. To ensure that premises, facilities, and equipment are properly maintained, FSIS requires the approval of all blueprints before construction or alterations at establishments, and publishes a list of approved equipment. In addition, rules of sanitary practice for establishments have been established to ensure that poultry products are produced in a sanitary manner and environment. Further, as part of this responsibility, FSIS determines the facility and equipment requirements for operations to be conducted under the various post-mortem inspection systems.

On January 29, 1986, FSIS published an interim rule amending the poultry products inspection regulations to establish a new Streamlined Inspection System (SIS) for broilers and cornish game hens (51 FR 3569). The new system was implemented in establishments previously slaughtering broilers and cornish game hens under modified traditional inspection (MTI) procedures. The new system requires a Finished Products Standards (FPS) program for evaluating the establishment's ability to control its processing operation and the wholesomeness and acceptability of the product. Establishments are responsible for performing the necessary trim of certain defects on passed carcasses and for operating the FPS program. The new system allows increased efficiency in the use of FSIS resources and those of the poultry industry, while providing consumers with wholesome and

otherwise unadulterated products. The new system was implemented on an emergency basis, in response to suddenly increased demands on FSIS resources and as an outcome of recent work by FSIS veterinarians and technical experts. FSIS solicited comments on the interim rule to determine what changes, if any, to the new system are necessary before the rule is made final.

The chief difference between SIS and MTI is that SIS requires no mirror inspection station. Rather, there are one or two inspection stations at which each inspector examines the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS-1; the two-inspector configuration is known as SIS-2. Inspection under both SIS-1 and SIS-2 is conducted in two phases—a post-mortem inspection phase and a reinspection phase. Under SIS-1, every bird on each production line is presented to a single inspector for examination. Under SIS-2, there are two inspection stations at which each inspector examines the outside, inside, and viscera of every other bird processed. The bird is presented to each inspector on a moving production line with the backside of the carcass toward the inspector and the viscera uniformly trailing or leading. In both SIS-1 and SIS-2, an establishment employee (a helper) is positioned next to each inspector. The maximum inspection rate for SIS-1 is 35 birds per minute; the maximum for SIS-2 is 70 birds per minute per two-inspector team—the same maximum rate as that permitted under MTI.

In the post-mortem inspection phase of SIS, the inspectors determine which birds must be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to be moved down the line as a passed bird subject to trim and reinspection. If an inspector finds that some poultry carcasses have certain defects not requiring condemnation of the whole carcass, the inspector may pass the carcass, which is then subject to trim and reinspection to assure that the defects are physically removed. The helper, at the inspector's direction, marks these carcasses for trim unless the defects are obvious. After post-mortem inspection is completed at the inspection stations, inspector's helpers independently perform any necessary trim on all passed carcasses after the giblets are harvested.

The reinspection station or stations are located at the end of the processing line and after each chiller. At the prechill station, inspectors examine the

carcasses that have been passed subject to reinspection for processing and trimming nonconformances by visually monitoring, checking data, and/or gathering samples at the station.

SIS-1 requires that the establishment provide one inspection station for each line and reinspection facilities adequate for the removal of carcasses from each line for evaluation. SIS-2 requires the establishment to provide two inspection stations for each line and similarly adequate reinspection facilities. Thus, implementation of SIS entails certain facility modifications in affected establishments.

The new inspection system was made possible by the analysis of data gathered in the development and implementation of the New Line Speed (NELS) inspection system for broilers and cornish game hens and the New Turkey Inspection (NTI) system. The experience gained from working with these systems enabled top FSIS veterinarians and technical experts to design new one and two-inspector systems, including SIS.

The analysis of technical information from the NELS and NTI tests, including work measurement findings, as well as previous experience with MTI, convinced FSIS that appropriate facilities and equipment are essential to assuring optimal inspection performance under the new system. Consequently, in developing the SIS approach to inspection, FSIS experts determined that facility and equipment standards prescribed for NELS should be adapted to SIS. Therefore, FSIS published a proposed rule on January 29, 1986 (51 FR 3621), along with the interim rule, to establish facility and equipment requirements for inspection and reinspection stations in SIS. A number of specific provisions in the proposed regulation, including the requirements for adjustable inspection platforms, carcass selection devices, and lighting, have been implemented with considerable success in the NELS and NTI systems.

#### Comments Received on Proposal

FSIS received nine comments in response to the proposal—eight from poultry processors and one from a poultry industry association. The following are summaries of those comments and FSIS's response to each:

1. *Comment:* The 60-inch height requirement at the inspection stations is excessive and creates a safety hazard for plant line employees.

*Response:* The 60-inch height requirement, along with an easily and rapidly adjustable platform, is based on



accommodating inspectors of different heights. Industrial engineers, using human factors to establish the optimal relationship between inspectors and their workplace, have concluded that specific body position requirements are needed for an inspector to properly inspect the bird with a minimum of strain and fatigue. Since rotation of inspectors is required, the station platforms must be adjustable. Establishments with floor drains may install the platform below the floor level to prevent raising the line for all establishment employees, thereby preventing a health safety hazard.

2. *Comment:* There is no need to change the inspection platform from those required under modified traditional inspection. In fact, the new inspection platforms create a safety hazard for inspectors by placing the inspectors high above the floor, having slippery surfaces, and having inadequate space for the inspector to sit on a stool or to change stations during breaks or station rotation.

*Response:* Because the requirements for the platforms under MTI were not specific enough to minimize the strain and fatigue for the inspector, FSIS decided to specify minimum platform requirements. The experience gained from working the NELS and NTI systems, including work measurement data, convinced FSIS that placing the inspector in the correct position is essential in assuring optimal inspection performance under SIS. However, the procedure for approving platforms has been modified to allow for better review and control over the construction of the platforms, to accommodate the needs of individual establishments, and to provide safer work stations for inspectors. The adjustable platforms must be slip resistant, have safe lift mechanisms, and be large enough to accommodate stools and to allow inspectors to safely rotate during station or break changes. Additionally, there will be minimum bumper requirements. Under these specifications, establishments are required to submit blueprints for approval to FSIS's Facilities, Equipment, and Sanitation Division. The specifications may be obtained from Facilities, Equipment, and Sanitation Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-5627.

3. *Comment:* Since all sample carcasses at the reinspection stations have been washed, the word "handrinse" should be substituted for "handwash" in § 381.36(c)(2)(vi).

*Response:* Since edible product is being handled, all persons working at the reinspection station should thoroughly wash their hands before handling the clean carcass.

Additionally, since the paperwork for the Finished Product Standards program requires that the inspector have clean and dry hands, each reinspection station must have hot and cold water, soap, and towels requiring, of course, "handwashing" facilities rather than "handrinsing" facilities.

#### Final Rule

#### List of Subjects in 9 CFR Part 381

Carcasses and parts, Facilities, Poultry products inspection.

For the reasons set out in the preamble, Title 9, Part 381 of the Code of the Federal Regulations is amended as set forth below.

#### PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 381.36(c) is revised to read as follows:

#### § 381.36 Facilities required.

\* \* \* \* \*

(c) Facilities for the Streamlined Inspection System (SIS). The following requirements for lines operating under SIS are in addition to the normal requirements to obtain a grant of inspection. The requirements for SIS in § 381.76(b) also apply.

(1) The following provisions shall apply to every inspection station:

(i) The conveyor line shall be level for the entire length of the inspection station. The vertical distance from the bottom of the shackles to the top of the adjustable platform (paragraph (c)(1)(iv) of this section) in its lowest position shall not be less than 60 inches.

(ii) Floor space shall consist of 4 feet along the conveyor line for the inspector, and 4 feet for the establishment helper. A total of at least 8 feet along the conveyor line shall be supplied for one inspection station and 16 feet for two-inspection stations.

(iii) Selectors or "kickouts" shall be installed in establishments with two inspection stations on a line so each inspector will receive birds on 12-inch centers with no intervening birds to impede inspection. The selector must move the bird to the edge of the trough for the inspector and establishment helper. The selectors must be smooth,

steady, and consistent in moving the birds parallel and through the inspection station. Birds shall be selected and released smoothly to avoid swinging when entering the inspection station.

(iv) Each inspector's station shall meet the requirements specified in § 381.53. The station shall have a platform that is slip-resistant and can be safely accessed by the inspector. The platform shall be designed so that it can be easily and rapidly adjusted for a minimum of 14 inches vertically while standing on the platform. The platform shall be a minimum length of 4 feet and have a minimum width of 2 feet; the platform shall be designed with a 42-inch high rail on the back side and with ½-inch foot bumpers and both sides and front to allow safe working conditions. The platform must have a safe lift mechanism and be large enough for the inspector to sit on a stool and to change stations during breaks or station rotation.

(v) Conveyor line stop/start switches shall be located within easy reach of each inspector.

(vi) A trough or other facilities complying with § 381.53(g)(4) of this Part shall extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where the trimming has been performed. The trough must be of sufficient width to preclude trimmings, drippage, and debris from accumulating on the floor or platforms. The clearance between the suspended carcasses and the trough must be sufficient to preclude contamination of carcasses by splash.

(vii) A minimum of 200-footcandles of shadow-free lighting with minimum color rendering index value of 85<sup>1</sup> where the birds are inspected to facilitate inspection, notwithstanding the requirements of § 381.52(b).

(viii) "Online" handrinsing facilities with a continuous flow of water conforming to § 381.51(f) shall be provided for and within easy reach of each inspector and each establishment helper.

(ix) Hangback racks shall be provided for and positioned within easy reach of the establishment helpers.

(x) Each inspection station shall be provided with receptacles for condemned carcasses and parts. Such receptacles shall conform to the requirements of § 381.53(m).

(2) The following provisions shall apply only to prechill and postchill reinspection stations:

<sup>1</sup> This requirement may be met by deluxe cool white type of fluorescent lighting.



(i) Floor space shall consist of a minimum of 3 feet along each conveyor line and after each chiller to allow carcasses to be removed for evaluation. The space shall be level and protected from all traffic and overhead obstructions.

(ii) The vertical distance from the bottom of the shackles to the floor shall not be less than 48 inches.

(iii) A table, at least 2 feet wide, 2 feet deep, and 3 feet high designed to be readily cleanable and drainable shall be provided for reinspecting the sampled birds.

(iv) A minimum of 200-footcandles of shadow-free lighting with a minimum color rendering index of 85 on the table surface shall be provided.

(v) A separate clip board holder shall be provided for holding the recording sheets.

(vi) Handwashing facilities shall be provided for and shall be within easy access of persons working at the stations.

(vii) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of the person at the station.

Done at Washington, DC, on October 2, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-24389 Filed 10-20-87; 8:45 am]

BILLING CODE 3410-DM-M

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 4 and 5

[Notice 1987-12]

#### Public Records and Freedom of Information Act

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Election Commission has revised its regulations implementing the Freedom of Information Reform Act, Pub. L. No. 99-570, and guidelines established by the Office of Management and Budget (OMB), 52 FR 10012 (March 27, 1987). The revisions are based on the Commission's experience in working with the Freedom of Information Act (FOIA) and on public comments received in response to the Notice of Interim Rulemaking published by the Commission.

The revisions incorporate the recent changes to the FOIA regarding among other things, establishment of fees to be charged for search, review and

duplication of records in response to FOIA requests. These rules also include a revision of the FOIA fee reduction and waiver standard drawn directly from the language of the Reform Act, along with procedures for implementing that standard.

Further information on these revisions is provided in the supplementary information which follows.

**EFFECTIVE DATE:** November 20, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or Toll Free (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (FOIRA) requires each agency to promulgate regulations, pursuant to notice and receipt of public comments, specifying the schedule of fees applicable to the processing of Freedom of Information Act (FOIA) requests and establishing procedures and guidelines for determining when such fees should be waived or reduced. The FOIRA also requires the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of fees applicable to all agencies. OMB's guidelines were published on March 27, 1987 (52 FR 10012). The Federal Election Commission Interim Rule, published for comment on June 24, 1987 (52 FR 23636), conforms to the OMB guidelines.

The Commission received three comments on the interim rules. Having considered these comments, the Commission is now publishing the final rules together with a statement explaining their basis and purpose in accordance with the Administrative Procedure Act, 5 U.S.C. 553(c).

#### Statement of Basis and Purpose

*Basis and Purpose of the Public Records and Freedom of Information Act Regulations, 11 CFR Parts 4 and 5*

#### Part 4—Freedom of Information Act

The rules implementing the Freedom of Information Act have been revised and expanded as a result of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). Several new definitions and modifications have been made to broaden the scope of the FOIA and establish uniformity with the fee provisions set by the Office of Management and Budget.

The comments received were taken into consideration in developing the final rule. These comments primarily addressed definitions of terms contained in the proposed fee schedule regarding the different categories of requestors. In particular, the commenters objected to

the definitions of "freelance journalist," "representative of the news media" and "commercial use." However, the Commission's definitions of these terms conform to OMB guidelines and are consistent with the statute and legislative history.

**Section 4.1 Definitions.** This section adds seven new definitions, paragraphs (g) through (n). These amendments are intended to clarify the expanded provisions of the statute. Three of these definitions were addressed by the comments.

Concerning "commercial use," (11 CFR 4.1(k)) the commenters focus on statements in the legislative history which seem to indicate that it is the requestor rather than the nature of the request which is controlling. Specifically, one commenter proposed a definition of "commercial use" requestor that would distinguish between private, profit-making and non-profit entities, allowing at a minimum that requests from public interest groups, labor unions, libraries and the news media not be treated as commercial requests. This interpretation is contrary to legislative intent. Congress did not intend that organizations seeking to establish private repositories of public records would qualify for waivers. See 123 Cong. Rec. S 14038 (daily ed. Sept. 27, 1985) (statement of Sen. Hatch). Furthermore, the statute does not refer to commercial users, but instead plainly states "commercial use." Therefore, the Commission regulations implement the statute.

With regard to "representative of the news media" (11 CFR 4.1(n)), the comments received suggest that the Commission liberalize its definition beyond the guidelines set forth by OMB. One commenter stated that the Commission's definition is counter to the legislative history and allows the Commission to judge what is current before acting on a request. The commenter suggested that "representative of the news media" be broadened to include any person or organization which publishes or disseminates information to the public. The Commission has retained the word "news" in the definition because it is based on the statutory phrase "news media." The other commenters interpret the Commission definition as inconsistent with Congressional intent due to the use of the terms "current events" or information of "current interest to the public." The Commission concludes however, that the plain meaning of the word "news" entails currency of events and that its interpretation is consistent with the



statute and OMB guidelines. As a result no change has been made to this definition. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category.

Concerning "freelance journalist" (11 CFR 4.1(n)) one commenter suggested the Commission delete its definition of freelance journalist from the rules as it did not properly describe the work of a freelance journalist and discriminated against first-time freelancers. The Commission's intent was not to limit qualification under this definition to any one particular form of proof or discriminate against legitimate freelancers. Rather, its intent was to incorporate legitimate freelance journalists into the definition, but not anyone merely declaring himself or herself to be a freelance journalist. Accordingly, in addition to the standard set forth by Representative English in his comments in which he describes freelance writers as those "who can demonstrate that their work is likely to be published \* \* \*." 132 Cong. Rec. H 9464 (Oct. 8, 1986), the Commission has adopted other indicia of qualification consistent with another commenter's suggestion. Among these qualifications would be a contract or past publication record. The Commission considers this definition practical and has made no change in the final rule.

In addition to the above concerns expressed in all three comments one set of comments suggested among other things, that the OMB guidelines are in certain instances not supported by, or are contrary to, the legislative intent of the FOIRA. Specifically, this commenter suggested that the phrase "educational institution" (See 11 CFR 4.1(1)) is self defining. The commenter recommended that the Commission borrow from the Tax Code's section 501(c)(3) grant of tax deductible status to determine what constitutes an "educational institution." To adopt such a proposal would be contrary to the congressional intent of the FOIRA and OMB guidelines. The Tax Code merely provides that "corporations, any community chest, fund, or foundation, organized and operated exclusively for \* \* \* educational purposes \* \* \*" qualify for exemption from taxation. 26 U.S.C. 501(c)(3). The legislative history of the FOIRA makes it plain that mere non-profit status does not entitle a person or organization to qualify for a limitation of fees as an educational institution. 132 Cong. Rec. S14040 (Sept. 27, 1986.)

Accordingly, the Commission rejects this suggestion.

**Section 4.5 Categories of exemptions.** This section revises the introductory text in paragraphs (a) and (a)(1) and redesignates paragraphs (b) through (d) as paragraphs (c) through (e). The purpose of this change is to reflect the extensive revisions in the FOIRA exempting information from disclosure under the FOIA, and establishing three special exclusions for specific types of law enforcement records.

**Section 4.7 Requests for records.** This section is amended to reflect circumstances that might warrant an extension of time for fulfilling a request due to the addition of regulations concerning advance payments at § 4.9(f).

**Section 4.9 Fees.** This section has received extensive revisions in order to make the FOIA fees charged by government agencies more uniform. Accordingly, the Commission has revised and amended Section 4.9 to conform with government wide standards.

One commenter argued that there is no basis in the FOIRA or its legislative history for construing the automatic waiver of fees for the first two hours of search time to mean something less than that for computer searches. 11 CFR 4.9(a)(2). Congress made it clear that each agency must develop regulations based on OMB's guidelines for a uniform schedule of fees. The Commission's regulations are in conformance with OMB's guidelines on this section, and therefore considered both appropriate and consistent with the requirements of the FOIRA.

This commenter along with another commenter also suggested that the Commission reject the Department of Justice fee waiver policy and adopt simpler less restrictive fee waiver regulations. 11 CFR 4.9(b). The Commission has not utilized the six factors outlined by the Justice Department in its 1983 memorandum but has developed its own standard without guidance from the Department of Justice. Furthermore, one comment received suggests that in light of the Paperwork Reduction Act the Commission should reassess its fee waiver regulations because they seek information from requestors. However, 2 U.S.C. 438(c) exempts the Commission from the Paperwork Reduction Act.

In response to actual Commission practices relating to requests for special mailing services, the Commission has revised the portion of § 4.9(c)(4) dealing with "other charges." The interim rule

appeared to indicate that the Commission would initially pay for such services and bill the requestor. In fact, the Commission's practice is to have requestors pay these costs directly to the company providing the expedited delivery or mailing service. The final rule reflects this practice and explains how it will operate.

Another commenter suggested that the Commission adopt the language in the OMB guidelines relating to "aggregating requests" (11 CFR 4.9(e)) and "advance payments." (11 CFR 4.9(f)). The commenter asserted that § 4.9(e) fails to note the "presumptions against aggregation when the requests have been made more than 30 days apart and does not state that aggregation of multiple requests on unrelated subjects from one requester are prohibited." The Commission has clearly stated that it will consider the time frame involved, as well as the subject matter of the requests, and may find that requests made more than 30 days apart should be aggregated. The Commission, while setting guidelines for determining when requests should be aggregated, also believes each case should be considered on its own merits. The commenter also recommends adopting a clear presumption against advance payments. The Commission's regulations set forth two criteria to be considered when making a determination whether or not to require advance payment. The first criterion is when the Commission estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250. The second criterion is when a requestor has previously failed to pay a fee in a timely fashion. Moreover, the Commission regulations, while not a verbatim statement of the OMB guidelines, closely conform to the standard established by OMB and are consistent with the statute. As a result it is unnecessary to adopt the commenter's proposals.

#### Part 5—Access to Public Disclosure Division Documents

**Section 5.6(a)(1) Fees.** This section is amended to reflect the increase in the direct costs of microfilm and personnel to the Commission. The changes in the Public Disclosure fee schedule for these items are made to keep them consistent with the revised FOIA fee schedule.

#### List of Subjects

##### 11 CFR Part 4

Freedom of Information.

##### 11 CFR Part 5

Archives, Records.



For the reasons set out in the basis and purpose, Title 11, Parts 4 and 5 of the Code of Federal Regulations are amended as follows.

#### **PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT**

1. The authority citation for Part 4 is revised to read as follows:

Authority: 5 U.S.C. 552, as amended.

2. Section 4.1 is amended by revising paragraphs (g) through (n) to read as follows:

##### **§ 4.1 Definitions.**

(g) "Direct costs" means those expenditures which the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requestors, reviewing) documents to respond to a FOIA request. Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses such as the cost of space and heating or lighting the facility in which the records are stored.

(h) "Search" means all time spent looking for material that is responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents. This includes both manual searches and searches conducted with a computer using existing programming. Search time does not include review of material in order to determine whether the material is exempt from disclosure.

(i) "Review" means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, i.e., doing all that is necessary to excise exempt portions of the document and otherwise prepare the document for release. Review does not include time spent by the Commission resolving general legal or policy issues regarding the application of exemptions.

(j) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk).

(k) "Commercial use" means a purpose that furthers the commercial, trade, or profit interests of the requestor

or the person on whose behalf the request is made. The Commission's determination as to whether documents are being requested for a commercial use will be based on the purpose for which the documents are being requested. Where the Commission has reasonable cause to doubt the use for which the requestor claims to have made the request or where that use is not clear from the request itself, the Commission will seek additional clarification before assigning the request to a specific category.

(l) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(m) "Non-commercial scientific institution" means an organization that is not operated on a commercial basis, as that term is defined in paragraph (k) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(n) "Representative of the news media" means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. A freelance journalist may be regarded as working for a news organization and therefore considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by that news organization, even though that person is not actually employed by that organization. The best means by which a freelance journalist can demonstrate a solid basis for expecting publication by a news organization is by having a publication contract with that news organization. When no such contract is present, the Commission will look to the freelance journalist's past publication record in making this determination.

3. Section 4.5 is amended by revising the introductory text of paragraph (a), paragraph (a)(7) and paragraph (b) to read as follows:

##### **§ 4.5 Categories of exemptions.**

(a) No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

\* \* \* \* \*

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Whenever a request is made which involves access to records described in 11 CFR 4.5(a) (7): and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings; The agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

\* \* \* \* \*

4. Section 4.7 is amended by revising paragraph (c) to read as follows:



**§ 4.7 Requests for records.**

(c) Records or copies thereof will normally be made available either immediately upon receipt of a request or within ten working days thereafter, or twenty working days in the case of an appeal, unless in unusual circumstances the time is extended or subject to 11 CFR 4.9(f)(3), which governs advance payments. In the event the time is extended, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is—

(1) Necessary to locate records or transfer them from physically separate facilities; or

(2) Necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or

(3) Necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which have a substantial subject matter interest therein.

5. Section 4.9 is revised to read as follows:

**§ 4.9 Fees.**

(a) *Exceptions to fee charges*—(1) *General.* Except for a commercial use requester, the Commission will not charge a fee to any requester for the first two hours of search time and the first 100 pages of duplication in response to any FOIA request.

(2) *Free computer search time.* For purposes of this paragraph, the term "search time" is based on the concept of a manual search. To apply this to a search conducted by a computer, the Commission will provide the equivalent dollar value of two hours of professional staff time, calculated according to paragraph (c)(4) of this section, in computer search time. Computer search time is determined by adding the cost of the computer connect time actually used for the search, calculated at the rate of \$25.00 per hour, to the cost of the operator's salary for the time spent conducting the computer search, calculated at the professional staff time rate set forth at paragraph (c)(4) of this section.

(3) *Definition of pages.* For purposes of this paragraph, the word "pages" refers to paper copies of a standard agency size which will normally be 8½" x 11" or 8½" x 14". Thus, while a

requester would not be entitled to 100 free computer disks, for example, a requester would be entitled to 100 free pages of a computer printout.

(4) *Minimum charge.* The Commission will not charge a fee to any requester when the allowable direct cost of that FOIA request is equal to or less than the Commission's cost of routinely collecting and processing a FOIA request fee.

(b) *Fee reduction or waiver*—(1) The Commission will consider requests for the reduction or waiver of any fees assessed pursuant to paragraph (c)(1) of this section if it determines, either as a result of its own motion or in response to a written submission by the requester, that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and that disclosure of the information is not primarily in the commercial interest of the requester.

(2) A request for a reduction or waiver of fees shall be made in writing by the FOIA requester; shall accompany the relevant FOIA request so as to be considered timely; and shall include a specific explanation as to why the fee for that FOIA request should be reduced or waived, applying the standard stated in paragraph (b)(1) of this section to the facts of that particular request. In addition, the explanation shall include: the requester's (and user's, if the requester and the user are different persons or entities) identity, qualifications and expertise in the subject area, and ability and intention to disseminate the information to the public; and a discussion of any commercial or personal benefit that the requester (and user, if the requester and user are different persons or entities) expects as a result of disclosure, including whether the information disclosed would be resold in any form at a fee above actual cost.

(c) *Fees to be charged.* (1) The FOIA services provided by the Commission in response to a FOIA request for which the requester will be charged will depend upon the category of the requester. The categories of FOIA requestors are as follows:

(i) *Commercial use requestors.* A requester of documents for commercial use will be assessed reasonable standard charges for the full allowable direct costs of searching for, reviewing for release and duplicating the records sought, according to the Commission's schedule of fees for those services as set forth at paragraph (c)(4) of this section. A commercial use requester is not entitled to two hours of free search time

nor 100 free pages of duplication of documents.

(ii) *Educational and non-commercial scientific institution requestors.* The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) *Requestors who are representatives of the news media.* The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, the requester must meet the criteria listed at 11 CFR 4.1(n) and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use.

(iv) *All other requestors.* The Commission will charge requestors who do not fit into any of the categories listed in paragraph (c)(1) (i), (ii) or (iii) of this section the full direct costs of searching for and duplicating records in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first two hours of search time and the first 100 pages of duplication. Requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(2) The Commission may assess fees for the full allowable direct costs of searching for documents in response to a request even if the Commission fails to locate any documents which are responsive to that request and, in the



case of commercial use requestors, of reviewing documents located in response to a request which the Commission determines are exempt from disclosure.

(3) If the Commission estimates that search or duplication charges are likely to exceed \$25.00, it will notify the requestor of the estimated amount of the fee unless the requestor has indicated in advance a willingness to pay a fee as high as that estimated by the Commission. Through this notification, the Commission will offer the requestor the opportunity to confer with Commission staff to reformulate the original request in order to meet the requestor's needs at a lower cost.

(4) The following is the schedule of the Commission's standard fees. The cost of staff time will be added to all of the following fees, generally at the "Professional" rate listed below, except for the cost of "Photocopying from photocopying machines" which has been calculated to include staff time.

Photocopying	
Photocopying from photocopying machines.....	\$.07 per page
Photocopying from microfilm reader-printer.....	\$.15 per page
Paper copies from microfilm-paper print machine.....	\$.05 per frame page
Reels of Microfilm	
Daily film (partial or complete roll)....	\$2.85 per roll
Other film (partial or complete roll)....	\$5.00 per roll
Publications: (new or not from available stocks)	
Cost of photocopying document.....	\$.07 per page
Cost of binding document.....	\$.30 per inch
Publications: (available stock)	

If available from stock on hand, cost is based on previously calculated cost as stated in the publication (based on actual cost per copy, including reproduction and binding). Commission publications for which fees will be charged include, but are not limited to, the following: Advisory Opinion Index, Report on Financial Activity, Financial Control and Compliance Manual, MUR Index, and Guideline for Presentation in Good Order.

#### Computer Tapes

Cost to process the request at the rate of \$25.00 per hour connect time plus the cost of the computer tape (\$25.00) and professional staff time (see Staff Time).

#### Computer Indexes (including Name Searches)

Cost to process the request at the rate of \$25.00 per hour connect time plus the cost of professional staff time (see Staff Time).

#### Staff Time

Clerical: \$4.50 per each half hour (agency average of staff below a GS-11) for each request.

Professional: \$12.40 per each half hour (agency average of staff at GS-11 and above) for each request.

#### Other Charges

Certification of a Document: \$7.35 per quarter hour.

Transcripts of Commission meetings not previously transcribed: \$7.50 per half hour (equivalent of a GS-11 executive secretary).

The Commission will not charge a fee for ordinary packaging and mailing of records requested. When a request for special mailing or delivery services is received the Commission will package the records requested. The requestor will make all arrangements for pick-up and delivery of the requested materials. The requestor shall pay all costs associated with special mailing or delivery services directly to the courier or mail service.

(5) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requestor of the identity of the private contractor who will perform the duplication services. If fees are charged for the production of computer tape or microfilm, they shall be made payable to that private contractor and shall be forwarded to the Commission.

(d) *Interest charges.* FOIA requestors should pay fees within 30 days following the day on which the invoice for that request was sent to the requestor. If the invoice is unpaid on the 31st day following the day on which the invoice was sent, the Commission will begin assessing interest charges, which will accrue from the date the invoice was mailed. Interest will be charged at a rate that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point, pursuant to 31 U.S.C. 3717. The accrual of interest will be stayed by the Commission's receipt of the fee, even if the fee has not yet been processed.

(e) *Aggregating requests.* A requestor may not file multiple requests, each seeking portions of a document or documents, in order to avoid payment of fees. When the Commission reasonably believes that a FOIA requestor or group of requestors acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission will aggregate any such requests and charge the appropriate fees. In making this determination, the Commission will consider the time period in which the requests have occurred, the relationship of the requestors, and the subject matter of the requests.

(f) *Advance payments.* The Commission will require a requestor to make an advance payment, i.e., a

payment before work is commenced or continued on a request, when:

(1) The Commission estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250. In such a case, the Commission will notify the requestor of the likely cost and, where the requestor has a history of prompt payment of FOIA fees, obtain satisfactory assurance of full payment, or in the case of a requestor with no FOIA fee payment history, the Commission will require an advance payment of an amount up to the full estimated charges; or

(2) A requestor has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). In such a case, the Commission may require that the requestor pay the full amount owed plus any applicable interest or demonstrate that the fee has been paid and make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request or a pending request from that requestor.

(3) If the provisions of paragraph (f) (1) or (2) of this section apply, the administrative time limits prescribed in 11 CFR 4.7(c) will begin only after the Commission has received the payments or the requestor has made acceptable arrangements to make the payments required by paragraph (f) (1) or (2) of this section.

## PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

1. The authority citation for Part 5 continues to read as follows:

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 9701.

2. Section 5.6(a)(1) is amended by revising the fees for "Reels of Microfilm," "Research Time/Photocopying Time," and "Other Charges" to read as follows:

### § 5.6 Fees.

(a)(1) \* \* \*

#### Reels of Microfilm

Daily film (partial or complete roll)....	\$2.85 per roll
Other film (partial or complete roll)....	\$5.00 per roll

\* \* \*

#### Research Time/Photocopying Time

Clerical: First ½ hour is free; remaining time costs \$4.50 per each half hour (agency average of staff below a GS-11) for each request.

Professional: First ½ hour is free; remaining time costs \$12.40 per each half hour (agency average of staff at GS-11 and above) for each request.



**Other Charges**

Certification of a Document: \$7.35 per quarter hour.

Transcripts of Commission meetings not previously transcribed: \$7.50 per half hour (equivalent of a GS-11 executive secretary).

Scott E. Thomas,

Chairman, Federal Election Commission.

Dated: October 13, 1987.

[FR Doc. 87-23999 Filed 10-20-87; 8:45 am]

BILLING CODE 6715-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 337

#### Unsafe and Unsound Banking Practices

**AGENCY:** Federal Deposit Insurance Corporation ("FDIC").

**ACTION:** Final rule.

**SUMMARY:** On June 16, 1986 the Board of Directors of the FDIC granted the request of several petitioners that the FDIC reconsider the provisions of the FDIC's rule governing securities subsidiaries and affiliates of insured nonmember banks which deal with the use of a common name or logo and separate offices. A request for comment on whether or not these provisions should be retained, modified, or eliminated was published in the *Federal Register* on August 20, 1986. A subsequent proposed rule was published for comment on April 9, 1987. Insured nonmember banks that prior to December 28, 1984 became affiliated with a securities company, or prior to that date established or acquired a subsidiary that engages in securities activities, are presently required to comply with the common name or logo and separate office restrictions of the regulation by October 15, 1987. The Board of Directors is extending the compliance deadline with these provisions of the regulation until November 15, 1987 for institutions currently subject to the October 15, 1987 deadline in order to provide staff further time to consider the comments on the proposed rule.

**EFFECTIVE DATE:** October 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898-3730, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** On November 19, 1984, the FDIC adopted § 337.4 of its regulations (12 CFR 337.4) (49 FR 46722, November 28, 1984), governing certain securities activities of

subsidiaries of insured nonmember banks and the affiliation of insured nonmember banks with certain types of securities companies. The regulation requires, among other things, that securities subsidiaries which engage in activities prohibited to the bank by the Glass-Steagall Act must meet the definition of "bona fide subsidiary." That definition in turn requires, among other things, that a bank and such a securities subsidiary must operate out of separate offices that share no common entrance. The subsidiary is also prohibited from sharing a common name or logo with the bank. The regulation imposes similar requirements upon a bank affiliated with a securities company if that securities company conducts activities that would be prohibited to the bank by the Glass-Steagall Act. Banks that were affiliated with such a securities company prior to December 28, 1984, or that established or acquired such a securities subsidiary prior to December 28, 1984, were required to comply with the name and office restrictions as soon as practicable, but not more than one year from December 28, 1984 without the FDIC's consent.

In December 1985 several banks filed petitions with the FDIC requesting that the FDIC reconsider the requirements in the regulation that a bank and its securities subsidiary or affiliate must have separate offices that share no common entrance and the prohibition on the use by a bank of a common name or logo with its securities subsidiary or affiliate. In order to permit sufficient time for the FDIC to fully consider the petitions, the Board of Directors extended the above-described compliance deadline with the common name or logo and separate office provisions of the regulation until June 30, 1986. (51 FR 880, January 9, 1986).

On June 16, 1986 the Board of Directors granted the requests to reconsider the common name or logo prohibition and the separate office and separate entrance requirement. A document soliciting comment on whether or not to modify or retain these restrictions was published for public comment on August 20, 1986. (51 FR 29657). At the same meeting, and in conjunction with its vote to solicit public comment, the Board of Directors voted to extend the June 30, 1986 compliance deadline for the name and office restrictions until December 31, 1986 for institutions with preexisting affiliate and subsidiary relationships. (51 FR 23405, June 27, 1986). Inasmuch as staff had not yet completed its review of the comments nor formulated a recommendation to the Board of

Directors by early December 1986 with respect to the August 20, 1986 solicitation of comment, the Board of Directors voted to extend the compliance deadline until June 30, 1987 in order to allow staff to prepare its recommendation. (51 FR 45755, December 22, 1986).

After considering the comments, the FDIC proposed to amend § 337.4 by: (1) Revising the requirement that securities subsidiaries and affiliates must use separate offices from the bank that share no common entrance with the bank, (2) deleting the prohibition against such subsidiaries and affiliates sharing a common name or logo with the bank, and (3) establishing certain affirmative disclosure requirements to the effect that investments recommended, offered or sold by or through such subsidiary or affiliate are not FDIC insured deposits, that the subsidiary and affiliate are separate organizations from the bank, and that the obligations of the subsidiary and affiliate are not guaranteed, warranted or otherwise supported by the bank. (52 FR 11492, April 9, 1987). The comment period closed on May 11, 1987. As staff had not completed work on a recommendation to the Board of Directors as of mid-June 1987, the Board of Directors voted to extend the current June 30, 1987 compliance deadline with the common name or logo and separate entrance provisions of the regulation until October 15, 1987. At its October 13, 1987 Board of Directors' meeting the FDIC's Board of Directors further extended the compliance deadline until November 15, 1987.

In accordance with 5 U.S.C. 553, the FDIC has found that prior notice and a delayed effective date with respect to this amendment are unnecessary as the amendment delays the imposition of requirements that are already imposed by existing regulation. Since the amendment only provides for an extension of time for compliance with certain portions of the regulation and imposes no burden upon banks, securities affiliates or the public, it is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### List of Subjects in 12 CFR Part 337

Banks, banking; Securities, State nonmember banks.

In consideration of the foregoing, the FDIC hereby amends Part 337 of Title 12 of the Code of Federal Regulations as follows:



**PART 337—UNSAFE AND UNSOUND BANKING PRACTICES**

1. The authority citation for Part 337 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818(a), 1818(b), 1819, 1828(j)(2), 1821(f).

2. Part 337 is amended by revising paragraph (h)(3) of § 337.4 to read as follows:

**§ 337.4 Securities activities of subsidiaries of insured nonmember banks: bank transactions with affiliated securities companies.**

(h) \* \* \*

(3) An insured nonmember bank described in § 337.4(h)(1) shall comply with the requirements imposed by § 337.4(a)(2) (ii) and (iii) and by § 337.4(c) (1) and (5) as soon as practicable (but not later than November 15, 1987 without the FDIC's consent).

By Order of the Board of Directors,  
Dated at Washington, D.C., this 13th day of October 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,  
Executive Secretary.

[FR Doc. 87-24325 Filed 10-20-87; 8:45 am]

BILLING CODE 6714-01-M

**DEPARTMENT OF COMMERCE****International Trade Administration****15 CFR Part 371**

[Docket No. 70903-7203]

**Exports to Singapore Under General Licenses G-COM and GCG**

**AGENCY:** Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Export Administration is removing the requirement for a validated license for certain shipments of U.S.-origin commodities to Singapore. Because of the improvement in Singaporean export control measures, Export Administration is amending General Licenses G-COM and GCG to authorize shipments to Singapore. This action is part of the Department of Commerce initiative to remove unnecessary export licensing requirements for shipments to nations cooperating to protect U.S. strategically controlled goods and technologies. In addition, this action will lessen the administrative burden on U.S. exporters and their foreign customers.

**EFFECTIVE DATE:** This rule is effective October 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Black, Regulations Branch, Export Administration, Telephone: (202) 377-2440.

**SUPPLEMENTARY INFORMATION:****Rulemaking Requirements**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Part 371**

Exports, Reporting and recordkeeping requirements.

**PART 371—[AMENDED]**

Accordingly, Part 371 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR Part 371 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

**§ 371.8 [Amended]**

2. Section 371.8 is amended by adding "Singapore," between "Finland," and "Sweden," in paragraph (a) and by adding "Singapore," between "Portugal," and "Spain," in paragraph (b).

**§ 371.14 [Amended]**

3. In § 371.14, paragraph (b) is amended by adding "Singapore," immediately before the word "Sweden,".

Dated: October 8, 1987.

Richard Seppa,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-24318 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DT-M

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Part 240**

[Release No. 34-25034]

**Rescission of Rule Governing Use of Predispute Arbitration Clauses in Broker-Dealer Customer Agreements**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is announcing the rescission of Rule 15c2-2 (17 CFR 240.15c2-2) concerning the use of predispute arbitration clauses since, in light of the development of case law, the rule is no longer appropriate.

**DATE:** October 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert Love, (202) 272-3064, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:****I. Discussion**

The Commission is rescinding § 240.15c2-2 of the Code of Federal



Regulations (17 CFR 240.15c2-2). Rule 15c2-2 was adopted by the Commission in 1983<sup>1</sup> in order to address regulatory concerns arising from the inclusion in standard form customer agreements of predispute arbitration clauses [i.e., agreements requiring customers to submit to arbitration all future disputes.] In light of the fact that then existing case law generally held that predispute agreements to arbitrate claims arising under the Securities Act of 1933 and the Securities Exchange Act of 1934 ("Exchange Act") were void and unenforceable,<sup>2</sup> the Commission determined that their inclusion in customer contracts without disclosure of their inapplicability to federal securities law claims was misleading, thus constituting a "fraudulent, manipulative or deceptive act or practice" within the meaning of the Exchange Act.<sup>3</sup>

On June 8, 1987, the Supreme Court held in *Shearson/American Express v. McMahon*<sup>4</sup> that predispute agreements to arbitrate claims arising under the Securities Exchange Act of 1934 are enforceable. In addition, although the Court did not expressly overrule *Wilko v. Swan*<sup>5</sup> which held that predispute agreements to arbitrate claims arising under section 12(2) of the Securities Act of 1933 were not enforceable, the Court's reasoning raised questions regarding the continuing vitality of that decision. In light of these developments, the Commission believes that Rule 15c2-2 is no longer appropriate or accurate and, accordingly, should be rescinded.

The Commission finds that notice and public procedures are unnecessary in the public interest because Rule 15c2-2 is no longer appropriate in light of case law developments.<sup>6</sup> Moreover,

rescission of the rule may become effective upon publication in the *Federal Register* since it relieves a restriction.<sup>7</sup> The Commission further finds that this action will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>8</sup>

#### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

#### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted.

#### § 240.15c2-2 [Removed]

2. Section 240.15c2-2 is removed.

By the Commission.

Jonathan G. Katz,

Secretary.

October 15, 1987.

[FR Doc. 87-24398 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

#### DEPARTMENT OF THE TREASURY

##### Customs Service

#### 19 CFR Part 12

[T.D. 87-132]

#### Customs Regulations Amendment Relating to Enforcement of Protection of Semiconductor Chip Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations to require that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the U.S. International Trade Commission excluding, the importation of the products. Customs will then enforce the court order or exclusion order. This action is being taken to protect the rights that have been granted to owners of semiconductor chip products under the Semiconductor Chip Protection Act of 1984.

<sup>1</sup> See 5 U.S.C. 553 (d)(1) and (d)(3).

<sup>2</sup> See 15 U.S.C. 78w(a)(2).

EFFECTIVE DATE: November 20, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Samuel Orandle, (202) 556-5765;

Operational Aspects: Harrison C. Feese, (202-566-8651).

#### SUPPLEMENTARY INFORMATION:

##### Background

Title III of Pub. L. 98-620, cited as the "Semiconductor Chip Protection Act of 1984," added a new Chapter 9 to Title 17, United States Code (17 U.S.C. 901 through 914), providing for protection of mask works that are fixed in semiconductor chip products. A mask work is defined as a series of related images, however fixed or encoded, that represent the three-dimensional patterns in the layers of a semiconductor chip. It is fixed in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration.

As a condition of the protection extended to mask works under 17 U.S.C. 908(a), protection terminates "if application for registration of a claim of protection in the mask work is not made \* \* \* within 2 years after the date on which the mask work is first commercially exploited." The U.S. Copyright Office has been designated to administer the registration system for mask works.

The owner of a registered mask work has the exclusive right, under 17 U.S.C. 905, to reproduce it and to import and distribute a semiconductor chip product in which the mask work is embodied. In addition, pursuant to 17 U.S.C. 906, the owner of a particular product made by the owner of the mask work may import or distribute or otherwise dispose of or use, but not reproduce, that particular product without the authority of the owner of the mask work. The term of protection for the mask owner is 10 years from the date on which the mask work is registered, or the date on which the mask work is first commercially exploited anywhere in the world, whichever occurs first.

Under 17 U.S.C. 910(c)(1), the Secretary of the Treasury and the U.S. Postal Service are empowered to separately or jointly issue regulations for the protection of the rights of mask work owners with respect to importations. These regulations may require, as a condition for the exclusion of articles from the U.S., that the person seeking exclusion take any one or more of the following actions:

<sup>1</sup> Securities Exchange Act of 1934 Release No. 20397, November 18, 1983, 48 FR 53404.

<sup>2</sup> See *Wilko v. Swan*, 346 U.S. 427 (1953); *Moran v. Paine Webber Jackson & Curtis*, 389 F.2d 242 (3d Cir. 1968); *Greater Continental Corp. v. Schechter*, 422 F.2d 1100 (2d Cir. 1970); *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178 (2d Cir.), cert. denied, 385 U.S. 817 (1966); *Ayres v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 538 F.2d 532 (3d Cir.), cert. denied, 429 U.S. 1010 (1976); *Sibley v. Tandy Corp.*, 543 F.2d 540 (5th Cir. 1976), cert. denied, 434 U.S. 824 (1977); *Allegaert v. Perot*, 548 F.2d 432 (2d Cir.), cert. denied, 432 U.S. 910 (1977); *Weissbuch v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 558 F.2d 831 (7th Cir. 1977); *Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017 (6th Cir. 1979); *DeLancie v. Birr*, *Wilson & Co.*, 648 F.2d 1255 (9th Cir. 1981) (dictum); *Inghar v. Drexel Burnham Lambert, Inc.*, 683 F.2d 603 (1st Cir. 1982) (same); and *First Heritage Corp. v. Prescott, Ball & Turben*, Fed. Sec. L. Rep. (CCH) § 99,404 (6th Cir. 1983). But cf., *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974).

<sup>3</sup> Securities Exchange Act Release No. 20397 (November 18, 1983).

<sup>4</sup> 482 U.S. — (1987).

<sup>5</sup> 346 U.S. 427 (1953).

<sup>6</sup> See 5 U.S.C. 553(b)(3)(B).



(1) Obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC) under section 337, Tariff Act of 1930 (19 U.S.C. 1337), excluding importation of the articles;

(2) Furnish proof that the mask work involved is protected under 17 U.S.C. 905 and that the importation of the articles would infringe the rights of the mask work owner; and/or

(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

Under options (2) or (3), which involve a Customs determination on its own that an imported mask work is infringing, without the intervention of a court or the USITC, articles which are imported in violation of the rights set forth in 17 U.S.C. 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited article may be destroyed as directed by the Secretary of the Treasury, except that the article may be returned to the country of export whenever it is shown to the satisfaction of the Secretary that the importer had no reasonable grounds for believing that his acts constituted a violation of the law.

The Semiconductor Chip Protection Act (the SCPA) became effective upon its enactment on November 8, 1984. However, 17 U.S.C. 913(a) held the registration and enforcement mechanisms in abeyance for 60 days. These registration mechanisms and enforcement provisions, therefore, went into effect on January 9, 1985.

Customs considered all three of the options for protection of the mask work owner's rights under 17 U.S.C. 905 and decided that options (2) and (3) are not advisable. These options would require that Customs provide mask work protection in a similar manner to the way it protects copyrights. Under either of these options, owners would be required to record their registered mask works with Customs for a prescribed fee and Customs officers would have to interdict imported articles containing semiconductor chip products in order to identify those which infringe a recorded mask work.

Customs determined that this would require an expert knowledge of semiconductor chip technology. Customs has neither the required expertise on the part of its inspectional staff nor the resources or funds to train them for this task. Also, it would be operationally infeasible to disassemble articles in order to extract the suspected infringing chips for testing purposes. Further, the determination of infringement would involve a full adjudicatory review

requiring the presentation of evidence and an in-depth analysis of highly technical material. Customs does not have hearing examiners nor a panel of experts to insure an administrative review in less than the 18 months in which the USITC is required to conclude its investigation and make a determination.

Customs believes that the adjudication of semiconductor chip infringement issues is the appropriate domain of the USITC or the courts for several reasons. First, because of its experience with such matters as patents, the USITC has acquired an expertise that is essential to the resolution of complex infringement issues such as those raised by the SCPA. Secondly, in consideration of the novelty and controversial nature of chip infringement cases, and the lack of any guidelines, it is appropriate for the courts or the USITC to decide these cases in order to establish legal precedents, as they now do with respect to patent, trademark, and copyright infringement issues. Once the case is decided, Customs will enforce the court order, or USITC orders. Finally, adjudication of the issue in the courts or the USITC would be preferable to enforcement by Customs because the courts and the USITC can expeditiously and successfully balance the competing interests of the importer and the domestic producer of semiconductor chips.

To implement the SCPA, Customs published a notice in the *Federal Register* on July 29, 1986 (51 FR 27057), proposing to amend § 12.39, Customs Regulations (19 CFR 12.39), by adding a new paragraph (d) to require that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the USITC under 19 U.S.C. 1337, excluding importation of the articles. Exclusion orders issued by the USITC are enforceable by Customs under § 12.39(b), Customs Regulations.

The proposal specified that the regulation would be effective against all importers regardless of whether they have knowledge that their importations are in violation of the SCPA. Thus, importers who claimed that they had no knowledge that their importations were violative would not be able to use this claim as a defense against injunctive relief obtained by the mask work owner.

It was noted that the Commissioner of Customs would not be a party to the action in which injunctive relief is being sought from the court. Inasmuch as Customs would enforce any order of the court, it would not be necessary to name the Commissioner as a defendant in the

action. The proper parties to be named would be those persons involved in the importation of the alleged violative articles.

Only four comments were received in response to the notice. A discussion of these comments and our responses follow.

#### Discussion of Comments

*Comment:* One commenter proposed that Customs hold the allegedly infringing chip products while the mask work owner litigates the issues in court. Such a procedure would eliminate the necessity of adjudicating complicated legal issues.

*Response:* Customs does not agree with this suggestion because we would have to detain articles at the behest of "mask work" owners who allege that they plan to litigate the issue of "mask work" infringement. Presumably, the "mask work" owners would agree to post bond (17 U.S.C. 910(c)(1)), though the bond amount on a small initial shipment would be inadequate to serve as a deterrent. Detained articles would remain in Customs custody during the pendency of the litigation. Customs could be in the position of detaining imported goods simply because the owner filed a lawsuit. Given the rapid changes in chip technology, "mask work" owners could keep non-infringing but competing chip products off the market during their useful life simply by filing a lawsuit and purposefully causing delays in the trial date. Furthermore, the importer may lack the resources to contest the lawsuit. Customs does not have the expertise needed to access accurately the relative merits of "mask work" lawsuits, and would be reduced to detaining articles indiscriminately. In our opinion, Customs should have a court or USITC order before goods are detained.

*Comment:* Several commenters believed that the proposal would have a detrimental effect on the ability of mask work owners to protect against the small blatant pirate who disappears as soon as infringing copies enter the stream of commerce. The pirates default on actions filed against them and cannot be located to satisfy any judgments. The only meaningful remedy is stopping distribution upon entry. There is no reason for providing a lower standard of protection for mask works than is afforded other forms of intellectual property.

*Response:* As explained in the notice, we do not believe Customs enforcement is the answer to problems posed by small, fly-by-night "mask work" infringers. Customs cannot



indiscriminately detain the myriad of products which contain semiconductor chips based on allegations that the chips infringe protected "mask works." By the time Customs makes an informed decision on whether the imported article complained of is actually infringing, the "mask work" owner could obtain a preliminary injunction from the court or a temporary exclusion order from the USITC. Both of these forums are more expert and capable of taking proper action than Customs. Customs would, of course, honor such orders and detain goods.

**Comment:** One commenter agreed with Customs that much litigation under the SCPA will be highly technical and time consuming. In these cases, it may be impractical for Customs to retain custody of the allegedly infringing products while the case is litigated. The commenter believes, however, that some cases will involve uncontested instances of piracy and the uncontested nature of the case can be determined within 20 days from the filing of a complaint. The commenter understands Customs has discretion under the statute not to implement all of the conditions enumerated in section 910(c). Moreover, the commenter appreciates that any additional procedures will require expenditure of valuable staff time and that in the present environment of budget reductions, the assumption of additional duties clearly presents difficulties.

**Response:** Customs agrees with these comments. In uncontested court cases, a default judgment would issue quickly which would be honored and enforced by Customs.

**Comment:** The proposed regulations could potentially deny registered mask work owners the remedies that Congress contemplated in drafting section 910(c)(1). It is important that registered mask owners have access to exclusive remedies on a timely basis. Due to rapidly changing technologies, semiconductors have short life cycles. Under the proposal, the market window for an infringed-upon mask work may become inconsequential by the time a registered mask work owner obtains a court or USITC order. Section 910(c)(1) was enacted to provide Customs with a relatively flexible, inexpensive and timely set of options with which to determine the need for exclusion on a case-by-case basis. Congress did not intend that Customs require court or USITC orders for all exclusion orders.

It was suggested that Customs should consider implementation of a discretionary administrative procedure under which alleged infringing products could be seized if circumstances

warrant such action. The discretionary procedure would allow Customs considerable latitude in developing policies to fit the particular administrative situation. The commenters hope that Customs will retain flexibility to determine exclusion on a case-by-case basis.

**Response:** Drafting regulations and guidelines for Customs officers for consideration in "mask work" infringement cases, as suggested, is not feasible. In view of the many and varied missions of Customs and the increased demands on the time of Customs officers, the added burden of having Customs officers decide on a case-by-case basis whether to detain articles containing semiconductor chips on suspicion of "mask work" infringement, and how long the goods should remain under detention, is not justified. Customs would be forced to react to pressures from both sides demanding either that the goods be released or seized. Customs cannot promulgate detailed regulations on "mask work" infringement incorporating the suggested factors for consideration and also devote the hours required to train inspectional staff to use them correctly. In the absence of detailed regulations and guidelines, accusations of disparate treatment by Customs at different ports would be rampant. In particular cases, Customs could be accused of being arbitrary and capricious.

**Comment:** A commenter stated that technical expertise is not needed for infringement determination in every case. Section 910(c)(1)(B) requires that the mask work owner furnish proof that the mask work is protected under the SPCA and the importations of articles would infringe the protected mask work. No expert knowledge of semiconductor technology would be required of Customs. Nor would an additional allocation of resources by Customs be required to identify infringing semiconductor chips incorporated into consumer articles. The owner of the registered mask work would be expected to identify infringing chips and consumer articles, and assist Customs with technical expertise and relevant data. If Customs was not satisfied that the imports were not infringing, the issue could be referred to court or the USITC.

**Response:** Without technical expertise of its own on semiconductor chip technology, Customs would be reduced to accepting, without question, all evidence submitted by "mask work" owners regarding infringement. Technical expertise by Customs is essential so that we can assess independently the allegations and proof offered by "mask work" owners.

Customs experience with copyright and trademark cases is that owners take the position that anything remotely resembling their copyrighted or trademarked item is considered to be infringing. Customs does not believe it advisable to prohibit the entry of articles incorporating semiconductor chips based solely on self-serving allegations of "mask work" owners. A court order or USITC order, in Customs opinion, is an essential precondition to exclusion by Customs. Furthermore, Customs does believe it should be filing a lawsuit or a complaint with the USITC in questionable cases. The parties to the dispute may not choose to file such actions on their own, preferring to have Customs issue a free administrative decision. Further, if Customs decided some cases, but required the "mask work" owner to produce a court order or USITC exclusion order in others, Customs could be accused of being arbitrary and capricious. Customs would be no more successful than the USITC or the courts in establishing "mask work" infringement on a timely basis. It would not be practical for Customs to detain large shipments of articles containing semiconductor chips, and then extract and test the suspected chips for infringement. Considering the lack of legal precedents or guidelines for determining "mask work" infringement and the lack of technical expertise by Customs, most of these cases will surely be complicated. In contested cases, Customs would need to have hearing officers available to take testimony and other evidence from technical experts in order to reach an informed and impartial decision on its own on the issue of "mask work" infringement. At present, we do not have hearing officers available for this purpose. In our opinion, Customs is not required by the SCPA to acquire the necessary in-depth technical expertise and provide the hearing officers needed to assess testimony and evidence on the issue of "mask work" infringement. The USITC and the courts are in place now and fully competent to handle contested cases more quickly, considering that Customs has no expertise in this area and no quasi-judicial apparatus in place. Congress has provided three options in section 910(c)(1) and has provided that Customs could select "one or more" of those options. Customs has selected the option that requires the person seeking exclusion to obtain a court order or USITC order as a precondition.

**Comment:** Commenters contend that the owner of the recorded mask work would be expected to come forward with detailed information needed to



identify the imported articles which infringe the recorded mask work. Such information could include a set of overlays or photographs of the infringing chip taken from a particular model, the chip number which is marked on the module and/or the logo of the company of manufacture. Customs merely has to identify the model number from the exterior of the article. At most, Customs may wish to disassemble a number of these identified articles to confirm that they contain the identified chip number and logo, which normally are readily visible once the cover of the article is removed. In any event, the articles would not have to be disassembled for testing the chip and, with either procedure, such a practice would not be time consuming or operationally infeasible. Customs can also require the importer to furnish proof that the identified chip numbers are not contained in the imported articles. Customs always has the administrative flexibility, including the discretion to request a surety bond or to create a detention period for allegedly infringing chips.

*Response:* The commenters assume that those persons who would engage in "mask work" infringement would never change a model number, chip number or logo. Based upon our experience with regard to other enforcement areas, Customs would expect that these are some of the first things such persons would do to eliminate suspicion. Technical expertise would be essential so that Customs could assess chip overlays of protected models and other proofs of infringement offered by "mask work" owners independently, even though the model numbers, chip numbers or logos have changed. Customs disagrees with the comment that substantial disassembly and testing operations would not be required. Storage of articles detained while disassembly operations are underway would present serious problems as would obtaining skilled personnel for disassembly. Stopping commerce in articles alleged to incorporate infringing chips is a drastic first step. A court order of USITC exclusion order, in our opinion, should be required before detention or exclusion by Customs is initiated.

*Comment:* A Customs infringement determination requires the posting of a surety bond by the mask owner. To insure that a determination by Customs is not abused by the mask owner due to lack of technical expertise on the part of Customs, a surety bond should be required before a determination could be made. This would be especially

important where the alleged infringing chips are contained in expensive electronic articles. With this safeguard and the ability of Customs to refuse a determination in appropriate cases by requiring the mask work owner to obtain a court or USITC order, the mask work owner would have flexibility in enforcing his rights without the possibility of undue harm to the importer or the public.

*Response:* The surety bond does not fully compensate the importer for damages incurred by the wrongful detention of articles containing non-infringing chips. This is particularly true during periods when buying of electronics is heavy. Under the current guidelines applicable to imports detained on suspicion of piratical copying, the bond of the copyright owner is in the amount of the entered value of the shipment under detention, plus duties, plus 20 percent of this total. The inadequacy of the bond amount is apparent in cases where the detention of a small initial shipment by Customs throws a cloud over the importer's ability to deliver a large shipment scheduled to arrive shortly thereafter. The loss of a major customer could put the importer out of business or leave him with uncompensated losses, including legal expenses incurred in fighting the unwarranted detention. Furthermore, the copyright regulations provide a 30-day period for the copyright owner to decide whether or not to post the bond (19 CFR 143.43). If similar "mask work" regulations were promulgated, the "mask work" owner could purposefully wait 29 days, then decide not to post the bond, thereby eliminating competition for a substantial period without incurring any bond obligation. Customs does not believe the filing of a bond provides sufficient surety to override the need for a USITC or court order. Further, Customs would be open to charges of being arbitrary and capricious if we detained articles and allowed the "mask work" owner to post bond in some cases, thereby effectively eliminating competition, and released articles in other cases, requiring a USITC or court order as a prerequisite to Customs enforcement.

*Comment:* Section 910(c)(1) provides Customs with a relatively flexible, inexpensive and timely set of options with which to determine the need for exclusion on a case-by-case basis. Congress did not intend that Customs require court or USITC orders for all exclusion orders under section 910(c)(1). It was expected that there would be some situations in which the identification of infringing chips, or

products containing infringing chips, would be uncomplicated. In more complicated infringement cases where substantial similarity is an issue and expert testimony will be required, Customs could refuse to make a determination and require the mask work owner to obtain a court or USITC order. By limiting such an order to complicated cases and including section 910(c)(1)(B) as part of the enforcement procedure for simple infringement cases, the mask work owner will be given more flexibility and timely relief against infringers of the protected mask works. Moreover, the burden on Customs is minimal.

*Response:* We disagree. Without legal precedent or guidelines, all "mask work" infringement questions are complicated. As stated previously in this document, Customs lacks the expertise essential to make a determination on its own that "mask work" infringement is suspected. Technical expertise by Customs would be essential, so that we can assess chip overlays of protected models and other proofs of infringement offered by "mask work" owners independently. Substantial disassembly and testing operations by Customs would be required. Storage of articles detained while disassembly and testing operations are underway would present serious problems for Customs as would obtaining skilled personnel for disassembly. If Customs were required to differentiate between complicated cases on the one hand and uncomplicated cases on the other hand, and use a decision that the case is complicated to justify requiring a court or USITC order, Customs will face the impossible task of writing regulations and guidelines for determining what cases are complicated. Without detailed guidelines, Customs could be accused of being arbitrary and capricious in deciding which cases are complicated. Stopping commerce in articles alleged to incorporate infringing chips is a drastic first step. A court order or USITC exclusion order, in our opinion, should be required before action by Customs is initiated.

*Comment:* One commenter noted that importation infringements will be few if effective remedies are available. The supplementary information to the proposed regulation recognizes the "large unearned competitive advantage" obtained by the mask work pirate. However, it states that no factual data exists as to the extent of unauthorized importations, and specifically requests information as to the extent of importations alleged to infringe protected mask works embodied in



semiconductor chips. Although copying as a standard business practice was established well before the enactment of the SCPA, there have been no reported cases of foreign mask work infringement to date. The reasons for this are many. First of all, the SCPA currently serves as a deterrent to mask works infringement which did not exist before. Secondly, mask works protected by the SCPA can be licensed. Finally, the SCPA is only in its second year of existence. The commenter believes that the proposed regulations would weaken the protection afforded mask works and thereby encourage infringement. The commenter contends that if both the law and regulations pose an effective deterrent, the number of determinations of infringement of mask works by Customs will be few.

**Response:** Customs does not agree. In two years, there are no cases of foreign mask work infringement under the SCPA. Nevertheless, Customs is being asked to promulgate length and detailed regulations which would allow registered "mask work" owners to record their works with Customs for import protection. Customs would then be expected to, (1) provide training to Customs officers so that they would have the expertise needed to successfully monitor the whole gamut of electronic articles containing semiconductor chips for chips suspected of "mask work" infringement, (2) detain and store articles containing suspected chips, (3) examine the chips in our laboratories (the chips are consumed in the testing), and (4) provide expert legal review of the laboratory findings so that a correct legal determination on the complex issue of "mask work" infringement can be made with *no* court cases, USITC exclusion orders or other precedents available. In our opinion, Customs cannot become as heavily involved in enforcement of this issue as the commenter would like. We do not agree that the regulations would weaken the protection afforded "mask work" owners and encourage infringement. Neither do we see how the fact that a "mask work" can be licensed has anything to do with discouraging pirates who do not want to pay for the licenses from violating the SCPA.

After thorough consideration of all the comments and further review of the matter, Customs remains of the opinion that the only viable alternative for protection under the SCPA is for a court order or a USITC order to be obtained as a precondition to exclusion of an article by Customs.

#### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. It will affect only importers of semiconductor chip products and owners of these products who register them. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Drafting Information

The principal authors of this document were Bruce J. Friedman and Samuel Orandle, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Unfair competition.

#### Amendments

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

#### PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote. 11, Tariff Schedules of the United States), 1624. Section 12.39 also issued under 19 U.S.C. 1337, 1623; 17 U.S.C. 910.

2. Section 12.39, Customs Regulations, is amended by adding a new paragraph (d) to read as follows:

#### § 12.39 Imported articles involving unfair method of competition or practices.

(d) *Importations of semiconductor chip products.* (1) In accordance with the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*), if the owner of a mask work which is registered with the Copyright Office seeks to have Customs deny entry to any imported semiconductor chip products which infringe his rights in such mask work, the owner must obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC), under section 337, Tariff Act of 1930, as amended (19 U.S.C. 1337), excluding importation of such products. Exclusion orders issued by the USITC are enforceable by

Customs under paragraph (b) of this section. Court orders or exclusion orders issued by the USITC shall be forwarded, for enforcement purposes, to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, Washington, DC 20229.

(2) The district director shall enforce any court order or USITC exclusion order based upon a mask work registration in accordance with the terms of such order. Court orders may require either denial of entry or the seizure of violative semiconductor chip products. Forfeiture proceedings in accordance with Part 162 of this chapter shall be instituted against any such products so seized.

(3) This regulation will be effective against all importers regardless of whether they have knowledge that their importations are in violation of the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901-904).

William von Raab,  
Commissioner of Customs

Approved: July 13, 1987.

Francis A. Keating II,  
Assistant Secretary of the Treasury.

[FR Doc. 87-24392 Filed 10-20-87; 8:45 am]

BILLING CODE 4820-02-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 21 CFR Parts 193 and 561

[FAP 7H5542/R914; FRL-3278-9]

#### Triforine; Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This rule establishes a food additive and a feed additive regulation to permit residues of the fungicide triforine in or on certain food and feed items. The regulations, to establish maximum permissible levels for residues of triforine in or on commodities, were requested in a petition by EM Industries, Inc.

**EFFECTIVE DATE:** October 21, 1987.

**ADDRESS:** Written objections, identified by the document control number, [FAP 7H5542/R914], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C),



Office of Pesticide Programs,  
Environmental Protection Agency, 401  
M St., SW., Washington, DC 20460.  
Office location and telephone number:  
Rm. 237, CM#2, 1921 Jefferson Davis  
Highway, Arlington, VA 22202, (703)-  
557-1900.

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the Federal Register of August 21, 1987 (52 FR 31632), in which it was announced that EM Industries, Inc., 5 Skyline Drive, Hawthorne, New York 10532, had submitted food/feed additive petition 7H5542 to EPA requesting that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, propose establishing food/feed additive regulations to permit residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)]bis[formamide]) in or on the food commodity dried hops at 60 parts per million (ppm) (21 CFR Part 193) and in or on the feed commodity spent hops at 60 ppm (21 CFR Part 561).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in

the Federal Register of May 4, 1981 (46 FR 24950).

#### List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 7, 1987.

Douglas D. Camp, Jr.,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Chapter I is amended as follows:

#### PART 193—[AMENDED]

##### 1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 193.476 to Subpart A, to read as follows:

##### § 193.476 Triforine.

A food additive regulation is established to permit residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis[formamide]) in or on the following processed foods when present therein as a result of application to growing hops:

Foods	Parts per million
Hops, dried.....	60

#### PART 561—[AMENDED]

##### 2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 561.442, to read as follows:

##### § 561.442 Triforine.

A feed additive regulation is established to permit residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)]bis[formamide]) in or on processed feeds when present therein as a result of application to growing hops:

Feeds	Parts per million
Hops, spent.....	60

[FR Doc. 87-24123 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### 32 CFR Part 252

[DoD Directive 3100.5]

##### Offshore Military Activities Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

**SUMMARY:** This part revises Part 252 to update policy and responsibilities for military use of offshore areas. The Secretary of the Navy would be Executive Agent for outer continental shelf (OCS) activities coordination. The Secretary of the Army would continue to notify components of proposed navigation obstructions.

**EFFECTIVE DATE:** March 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christina Ramsey, Office of the Assistant Secretary of Defense (Production and Logistics), Pentagon, Washington, DC 20301-8000, telephone (202) 695-7820 or 325-2215.

##### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 32 CFR Part 252

Armed forces, Continental shelf.

Accordingly, Title 32 CFR Part 252 is revised to read as follows:

#### PART 252—DEPARTMENT OF DEFENSE OFFSHORE MILITARY ACTIVITIES PROGRAM

Sec.

- 252.1 Reissuance and purpose.
- 252.2 Applicability and scope.
- 252.3 Definitions.
- 252.4 Policy.
- 252.5 Responsibilities.

Authority: 5 U.S.C. 301.

##### § 252.1 Reissuance and purpose.

This part reissues 32 CFR Part 252 to update policies and procedures for the use of offshore areas by the Department of Defense. It shall serve as the basis for a comprehensive Offshore Military Activities Program.

##### § 252.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Organization of the Joint Chiefs of Staff (OJCS), and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Concerns the use of offshore areas for military purposes. It does not limit the responsibilities of the Secretary of



the Navy assigned under 33 U.S.C. 1101 *et seq.*

#### § 252.3 Definitions.

**Offshore Areas.** The submerged land areas defined in 43 U.S.C. 1301 *et seq.* and 43 U.S.C. 1331 *et seq.* and the adjacent waters affected by the use of those submerged lands.

**Offshore Military Activities Program.** The program established to implement DoD policies and procedures for those activities, operations, and installations that require an offshore environment and that may impact on offshore areas.

**Outer Continental Shelf.** All submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of 43 U.S.C. 1301 *et seq.*, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

**State-owned Offshore Submerged Lands.** Coastal portions of lands beneath navigable waters, as defined in section 2 of the Submerged Lands Act.

#### § 252.4 Policy.

(a) It is DoD policy to support the principle that lands composing the Outer Continental Shelf and state-owned offshore areas shall be used in the best interest of the United States. Therefore, it is DoD policy for the use of offshore areas to be shared with nonmilitary interests whenever they can be accommodated.

(b) The Secretaries of Defense and the Interior have agreed on procedures for resolving conflicts over joint use of offshore areas for military and mineral exploration or developmental purposes. In carrying out negotiations with elements of the Department of the Interior (DoI), the Department of Defense shall be guided by this agreement when appropriate.

(c) If a coastal state determines that the mineral potential of off-shore areas being used or proposed to be used for military purposes must be explored or developed, DoD shall endeavor to accommodate joint military and commercial use of those areas. If compatible joint use is not economically or militarily feasible, DoD shall seek agreement with the coastal state to exclude conflict areas from its leasing program.

#### § 252.5 Responsibilities.

(a) The Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) shall maintain a comprehensive program for the military use of the offshore environment and provide related direction and policy to DoD Components.

(b) The Secretary of the Army shall provide notices to the ASD(A&L), to affected military installations and activities, and to the Director of the Defense Mapping Agency Hydrographic/Topographic Center of potential obstructions and hazards to navigation as stated in the Rivers and Harbors Appropriation Act, of proposed permits for obstructions to be located on the Outer Continental Shelf under 43 U.S.C. 1331 *et seq.*, as amended, and of proposed permits for artificial reefs under the National Fishing Enhancement Act of 1984 to ensure compatibility with the Offshore Military Activities Program.

(c) The Secretary of the Navy shall:

- (1) Act as DoD Executive Agent for outer continental shelf matters and carry out responsibilities assigned to the Executive Agent in the Agreement.

- (2) Conduct continuing liaison with DoI, appropriate coastal states, and the ASD(P&L) to ensure compatibility between the DoD Offshore Military Activities Program and the related plans and programs of DoI and coastal states.

- (3) Inform concerned DoD Components of new developments in the DOI's, states', and industry's mineral leasing plans that may affect present or potential military interests in offshore areas.

- (4) Represent the Department of Defense on the Secretary of the Interior's Outer Continental Shelf Advisory Board.

(d) The Secretary of the Air Force shall, for those offshore areas under his control, conduct continuing liaison with the DoI and coastal states and enter into agreements necessary to ensure compatibility between military activities and relevant plans and programs of the DoI and coastal states.

(e) Heads of DoD Components shall:

- (1) Review proposed DoI's and states' mineral leasing plans and inform the Executive Agent of proposed activities that could be incompatible with military missions. When joint use is feasible, the Heads shall recommend conditions and stipulations that should be imposed in leases to ensure the integrity of military missions and otherwise protect the interests of the United States against claims arising out of damage to property or personal injury.

- (2) Establish and maintain lines of communication and coordination to ensure that the ASD(P&L) and the Executive Agent are fully aware of plans and programs involving offshore areas.

- (3) Review notices referred to in § 252.5(b) and notify the Army Chief of Engineers if proposed actions are incompatible with offshore military activities.

- (4) Inform the Army Chief of Engineers and the Executive Agent of any significant change in the status of offshore ranges, restricted areas, or operating areas.

- (5) Comply with the provisions of the Coastal Zone Management Act.

- (6) Conduct other activities related to offshore areas as requested by the ASD(A&L).

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1987.

[FR Doc. 87-24304 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-01-M

## PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

### 36 CFR Part 903

#### Privacy Act Update; Disclosure of Personal Information During Litigation

**AGENCY:** Pennsylvania Avenue Development Corporation (PADC).

**ACTION:** Final rule.

**SUMMARY:** This rule provides guidelines governing the routine use of records contained in PADC records systems for disclosure to the Department of Justice and to PADC during the course of litigation. It is intended to make nonconsensual disclosure of personal information, routinely used in litigation, more consistent with the requirements of the Privacy Act. Recent court decisions require that routine uses of records in Government Record Systems be narrow in scope and protect against unbridled discretion in allowing disclosures as a routine use. The rule sets forth the specific routine uses that support disclosure of Privacy Act records to the Department of Justice and for PADC disclosure in litigation. The rule conforms to Office of Management and Budget memorandum on Privacy Act Guidance—dated May 24, 1985.

**EFFECTIVE DATE:** October 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Talbot J. Nicholas II, Attorney, Pennsylvania Avenue Development Corporation, (202) 724-9088.

**SUPPLEMENTARY INFORMATION:** PADC published this rule for comment on November 4, 1985 (50 FR 45841). No comments were received. In addition, PADC published the rule as an interim rule on September 11, 1987 (52 FR 34384). No comments were received.

The Privacy Act of 1974 requires Government agencies to obtain the written consent of record subjects



before disclosing personal information from an agency system of records. The Act provides twelve specific exceptions to this requirement. One of the enumerated exceptions provides for the nonconsensual disclosure of records for "routine uses" of the data collected.

In the context of litigation, the government generally initiates disclosures of personal information as routine use exceptions. A 1984 federal court decision held that such routine uses must be narrowly drawn to preclude the government from disclosing, as a routine use, personal and embarrassing information about an individual in retaliation for suit being brought against it. Such routine use by the government could discourage meritorious claims from being filed by aggrieved parties.

The Office of Management and Budget has selectively reviewed existing routine uses for disclosures in support of litigation and has found that such uses could be for purposes that are inconsistent with the intent of the Privacy Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not constitute a "major rule" under Executive Order 12291.

#### List of Subjects in 36 CFR Part 903

##### Privacy.

For the reasons set out in the preamble, Part 903 of Chapter IX of Title 36 of the Code of Federal Regulations is amended as follows:

#### PART 903—PRIVACY ACT

Accordingly, the interim rule amending 36 CFR Part 903 which was published at 52 FR 34384 on September 11, 1987, is adopted as a final rule without change.

M.J. Brodie,

Executive Director.

Dated: October 13, 1987.

[FR Doc. 87-24347 Filed 10-20-87; 8:45 am]

BILLING CODE 7630-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 180

[OPP-300172A; FRL-3278-8]

#### Dimethylformamide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

#### ACTION: Final rule.

**SUMMARY:** This rule exempts dimethylformamide from the requirement of a tolerance when used in accordance with good agricultural practice in formulations with the fungicide triforine in or on the raw agricultural commodity hops. This regulation was requested by EM Industries, Inc. Also, elsewhere in this issue of the *Federal Register*, a food and a feed additive regulation are added to permit residues of triforine in or on dried and spent hops.

**EFFECTIVE DATE:** October 21, 1987.

**ADDRESS:** Written objections, identified by the document control number [OPP-300172A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1900.

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the *Federal Register* of August 21, 1987 (52 FR 31635), which announced that EM Industries, Inc., 5 Skyline Drive, Hawthorne, NY 10532, had requested that 40 CFR 180.1046 be amended by establishing an exemption from the requirement of a tolerance for residues of dimethylformamide when used in formulations with the fungicide triforine (*N,N*-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]bis[formamide]), in or on the raw agricultural commodity hops.

Inert ingredients are ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to

humans or the environment. EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Dimethylformamide was subject to these new review procedures. Also, data submitted by EM Industries, Inc., in support of its request were evaluated and discussed in the proposed rule. Based on the new review procedures and the fact that dimethylformamide is already exempt from the requirement of a tolerance under 40 CFR 180.1046 for residues in or on various raw agricultural commodities when used in formulations with the fungicide triforine, the Agency has determined that no additional test data will be required to support this regulation.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 7, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1046(a) is amended by adding, and alphabetically inserting, the



raw agricultural commodity hops to read as follows:

§ 180.1046 Dimethylformamide; exemption from the requirement of a tolerance.

(a) \* \* \*

*Commodities*

\* \* \* \* \*

*Hops*

\* \* \* \* \*

[FR Doc. 87-24122 Filed 10-20-87; 8:45 am]

BILLING CODE 6580-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 22

[CC Docket No. 80-57]

#### Revision and Update of Public Mobile Service Rules; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the amendatory language for § 22.15, as appearing in the Final Rule document in this proceeding concerning Part 22.

**FOR FURTHER INFORMATION CONTACT:** Carmen Borkowski (202) 632-6450.

**SUPPLEMENTARY INFORMATION:** On April 2, 1987, the Commission published a final rule concerning the revision of Part 22 (52 FR 10571).

#### § 22.15 [Correctly amended]

The amendatory language for § 22.15 is hereby corrected to read: "Section 22.15 is amended by revising paragraphs (b)(1), (i), (ii) and (b)(2)(i) and by adding paragraph (b)(1)(iii) to read as follows:"

Federal Communications Commission,  
William J. Tricarico,  
Secretary.

[FR Doc. 87-24375 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### 49 CFR Part 23

[Docket No. 64f and 64g; Notice No. 87-21]

#### Participation by Minority Business Enterprise in Department of Transportation Programs

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** Congress recently enacted section 106(c) of the Surface

Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). This section requires amendments in the Department's disadvantaged business enterprise (DBE) program, the most important of which is making women a presumptively disadvantaged class for purposes of the program. This rule makes the changes mandated by the new statute. In addition, the rule amends the definition of "Hispanic" to include Portuguese-Americans, consistent with Small Business Administration practice. It also changes the way in which purchases of materials and supplies from minority, women-owned, and disadvantaged business enterprises are counted toward recipients' and contractors' goals.

**DATES:** This rule is effective on October 21, 1987. Comments in response to the request for public comment are due December 21, 1987. Late-filed comments will be considered to the extent practicable.

**ADDRESS:** Comments should be addressed to Docket Clerk, Docket 64g, Department of Transportation, Room 4107, 400 7th Street SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will date stamp and sign the card and return it to the commenter.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Room 10424, Washington, DC 20590, (202) 366-9306.

**SUPPLEMENTARY INFORMATION:** This final rule serves three purposes. First, and most important, it amends the Department's disadvantaged business enterprise (DBE) regulations to conform with recent Congressional action that modified the statutory basis for the DBE program. These changes make women presumptively disadvantaged individuals for purposes of the program, set an average annual gross revenue limit of \$14 million (over a three-year period) for being considered a small business under the program, and require the Department to establish certification process guidelines for recipients.

Second, the rule makes a minor modification to the definition of "Hispanic" used in the DBE program. The amendment would include Portuguese Americans within the definition of Hispanic, in order to make

the Department's administration of this program consistent with Small Business Administration (SBA) administrative practice in similar programs.

Third, the Department is taking final action concerning the credit allowed toward goals for the use of MBE, DBE and WBE suppliers, in the FAA and FRA as well as in the FHWA and UMTA programs. This action is based on an October 1985 notice of proposed rulemaking (NPRM). This action would permit 60 percent of the value of goods purchased from an MBE, DBE, or WBE "regular dealer" to be counted toward a contractor's or recipient's goal. The percentage of goods countable toward goals would be reevaluated after two years. This rule also clarifies the application of the "commercially useful function" concept.

#### Request for Comments

The Department is seeking comments on the first two portions of the rule—changes to reflect section 106(c) of the STURAA and the amendment to the definition of Hispanic—since the Department has not previously provided interested persons the opportunity to comment on these matters. Following the receipt of comments on these subjects, the Department will publish a notice responding to the comments and, if appropriate, will promulgate amendments to the affected regulatory provisions.

The third portion of the rule, concerning suppliers, was the subject of an NPRM (50 FR 40422, October 2, 1985), and comments were obtained concerning the matters it covers. Consequently, comments are not being sought on the provisions of the final, rule provisions on this subject. However, the Department is seeking comments on whether a different percentage of credit for the use of DBE suppliers is appropriate for Urban Mass Transportation Administration (UMTA) programs than is applied to the rest of the Department's programs. Specifically, the Department seeks comment on whether, on a permanent or pilot program basis, goods purchased from DBE regular dealers in the UMTA program should be counted at 100 percent of their value.

#### Changes to Conform to Section 106(c) of the STURAA

Section 106(c) continues the DBE program established in 1983 by section 105(f) of the Surface Transportation Assistance Act of 1982. The basic structure of the DBE program remains intact, with the exceptions discussed below. Funds authorized by the 1982



legislation which have not been obligated by the date of enactment of the STURAA (April 2, 1987) are governed by the DBE provisions of section 106(c) of the STURAA, not by the provisions of section 105(f) of the 1982 Act.

The rule makes technical changes to § 23.61, the definition of "Act" in § 23.62, and the applicability language of § 23.63 to reflect the enactment of section 106(c) of the STURAA as the replacement for section 105(f) of the Surface Transportation Assistance Act of 1982, Appendix A, which follows Subpart D of the rule and provides a section-by-section explanation of its operation, is also being amended to conform to all changes made to the Part 23 by this rule.

Section 106(c)(2)(B) provides that women, like Black Americans, Hispanic Americans, and the other groups currently designated in the regulations, are presumed to be socially and disadvantaged individuals for purposes of the DBE program. To implement this provision, the Department is amending the definition of "socially and economically disadvantaged individuals" by adding a reference to women.

This change has an important implication for the administration of the Department's program. Heretofore, each recipient has had to have two separate goals: One for DBEs and one for WBEs. With the addition of women as a "presumptive" group, it no longer is practicable to retain this two-goal system. The legislative history of section 106(c) indicates that Congress intended the Department to adopt a one-goal system for DBEs under the new legislation.

Consequently, the Department is amending § 23.45(g)(4) to specify that, from now on, the DBE program will have only one goal. That is, each recipient's DBE program will have a single overall goal for DBEs, and each contract on which a goal is required will have a single contracting goal for DBEs. There will no longer be separate DBE and WBE goals.

Section 106(c)(4) of the STURAA requires the Department to establish uniform standards for recipients' certifications of DBE eligibility. In this rule, the Department is requiring recipients to take those steps specifically listed in the legislation. The steps listed in the amended § 23.45(f) are not the only possible things that recipients should do in certification. The Department seek comments on what additions or modifications should be made to this list.

Congress determined, in order to ensure that the DBE program meets its

objective of helping small minority businesses become self-sufficient and able to compete in the market with non-disadvantaged firms, that DBE firms should "graduate" from the program once their average annual receipts reached \$14 million. Section 106(c)(2)(A) of the STURAA mandates this result. An amendment to the definition of "small business concern" in § 23.62 implements this provision of the statute.

Section 106(c) makes the \$14 million figure subject to adjustment by the Secretary for inflation. The regulation provides that the Secretary shall make such adjustments from time to time. The Department seeks comment on the methodology for and frequency of these adjustments.

Finally, section 106(c)(3) requires an annually-updated list of eligible DBEs. Section 23.45(e) of the regulation already requires recipients to compile a directory. This rule implements the new statute by requiring the directory to be updated annually. Recipients will be expected, when they make their next annual update, to list all DBE firms, those owned and controlled by women as well as those owned and controlled by minorities. It is likely that most or all recipients already include the addresses of firms listed in their directories; however, in order to ensure conformity with section 106(c)'s requirement that the location of firms be stated, the regulation is amended specifically to require the listing of firms' addresses.

The DBE program—and hence the changes this rule makes in response to section 106(c) of the STURAA—continues to apply only to the Department's financial assistance programs for highways and urban mass transportation; it does not apply to other DOT financial assistance programs, such as the programs for airports and intercity rail service. Consequently, for example, airport sponsors receiving financial assistance from the FAA would continue to set separate goals for MBEs and WBEs.

The portion of the Congressional Conference Report on section 106(c) (House Report 100-27, at p. 148) urges the Secretary to reexamine existing waiver provisions (i.e., 49 CFR 23.65) and revise them to permit any state to more readily adjust its goal from the ten percent requirement, if that percentage does not reflect a reasonable goal. The Department seeks comment on what modifications to § 23.65, if any, are appropriate in light of this recommendation.

The Conference Report also expressed the view that participation of minorities and women should be equitably distributed throughout the highway

construction industry and that the implementation of the DBE program should not fall disproportionately on any one segment of the industry. Neither 106(c) nor the Conference report contains any directions or recommendations to the Secretary concerning what steps it would be reasonable for the Department to take in light of this expressed view. The Department seeks comment on any modifications of Part 23 that would be appropriate in response to the views expressed on this point in the Conference Report.

#### Amendment to Definition of Hispanic

The Department's DBE rule defines eligible businesses as being small business concerns owned and controlled by socially and economically disadvantaged individuals. It does so because section 105(f) of the Surface Transportation Assistance Act of 1982, and its successor, section 106(c) of the STURAA, explicitly direct the Department to use this definition, which derives from section 8(d) of the Small Business Act and implementing regulations issued by the Small Business Administration (SBA).

One of the groups presumed to be disadvantaged, under this definition, is "Hispanic Americans." Because an applicable government-wide definition of the term "Hispanic" did not include Portuguese-Americans, and because the SBA has never, through regulation, determined that Portuguese-Americans were disadvantaged, the Department's 1983 rule implementing section 105(f) did not treat Portuguese-Americans as part of the presumptively disadvantaged "Hispanic Americans" group.

Subsequently, the Department learned that internal SBA guidance directed that agency's personnel to regard Portuguese-Americans as Hispanics. Specifically, SBA provided a copy of a March 1986 internal directive, SBA Notice No. 8000-68, to the Department in December 1986. The notice provides in pertinent part:

[W]ith respect to Portuguese Americans and Section 8(a) eligibility \* \* \* such individuals are eligible as Hispanic Americans. In practice, the Agency has applied the phrase Hispanic Americans as including those individuals whose ancestry and culture are rooted in South American, Central American, Cuba, Dominican Republic, Puerto Rico, or the Iberian Peninsula, including Portugal.

While the Department's existing definition is consistent with applicable statutes, the Department has determined, as a policy matter, to amend the definition of "Hispanic



Americans" to include persons of Portuguese culture or origin. The Department believes it would be beneficial to make its DBE program consistent with the minority business programs of the SBA in this respect in order to avoid confusion. In addition, this change would make the definitions of Subpart D of Part 23 (applying to highway and mass transit programs) more consistent with those of Subpart A (applying to aviation and rail programs). Portuguese-Americans have been eligible to participate in the airport and rail programs since 1981.

#### Credit for Use of Suppliers and "Commercially Useful Function"

The Department's current MBE/DBE rules limit the credit toward goals that a recipient or contractor can obtain for purchasing materials and supplies from an MBE, WBE, DBE firm that does not manufacture the materials or supplies. Section 23.47(e) of the regulation provides as follows:

(e) A recipient or contractor may count toward its MBE goals expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBEs assume the actual and contractual responsibility for the provision of the materials and supplies.

(1) The recipient or contractor may count its entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(2) The recipient may count 20 percent of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

The Department proposed to change this provision. In an October 2, 1985, notice of proposed rulemaking (NPRM), the Department proposed to allow an unspecified, but increased, percentage of the cost of materials purchased from an MBE, WBE, or DBE supplier who was a "regular dealer" to count toward goals. In addition, the NPRM proposed refinements to the concept of "commercially useful function" that would more precisely define the credit allowable toward goals for use of MBE, WBE, and DBE firms performing such functions as hauling, professional and technical services, manufacturers' representatives, and insurance agents.

The Department received 56 comments on the NPRM. Of these, 27 favored increasing the percentage to 100 percent. Another 16 favored raising the percentage to a figure less than 100 percent (most of these comments recommended a percentage between 30 and 80 percent). The remaining comments did not take a position on this issue.

The reasons for increasing the percentage cited by those commenters favoring an increase were essentially those mentioned in the preamble to the NPRM. First, the current provision may have an adverse effect on MBE, DBE, or WBE suppliers, in that it provides less incentive for recipients and contractors to use their services than the services of other kinds of eligible firms (which are counted at 100 percent of the value of their products or services).

Second, it is likely to be more cost-effective for a recipient to use its resources to develop contacts with or provide technical assistance to a firm the use of which will result in 100 percent credit than one for which the "payoff" in terms of credit towards goals will be 20 cents on the dollar. As a result, the rule could unintentionally skew recipient's programs toward construction contractors and other service providers and away from dealers and suppliers of products.

Third, the provision may make it more difficult for some recipients to meet goals than others. For example, Urban Mass Transportation Administration (UMTA) recipients of operating assistance must meet their DBE goals largely through procurements of materials and supplies (e.g., bus fuel, spare parts). Since these recipients can get only 20 percent credit for the use of the MBE/DBE firms that provide these materials and supplies, the recipients will have a more difficult time meeting goals than those recipients (e.g., transit authorities or highway departments that do substantial amounts of construction contracting) 100 percent of the value of whose DBE contracts can be counted toward goals.

Fourth, some commenters also pointed out that the present rule is inconsistent with respect to treatment of the costs of supplies. If an MBE, DBE or WBE construction contractor buys supplies for a job from a non-minority firm, the entire cost of those supplies is credited toward the goal, since it becomes part of the contract price. If a recipient or non-minority contractor purchases the same supplies from an MBE, WBE, or DBE supplier, however, only 20 percent of the value of the supplies is credited toward the recipient's goals.

Commenters who opposed raising the percentage basically did so for the reasons cited in the original rule on this subject. That is, the commenters were concerned that prime contractors would rather meet goals through purchasing supplies than by using MBE, DBE, or WBE subcontractors, and that increasing the percentage of supply costs allowable toward goals would adversely affect subcontractors. In

addition, these commenters cited the relatively low portion of "value added" by suppliers, as contrasted with other sorts of contractors. They also expressed the concern that the proposal might increase the participation of brokers and manufacturers' representatives, which they viewed as inconsistent with the intent of the program.

The commenters who supported increasing the percentage, but to a figure less than 100 percent, generally did so in the belief that a compromise recognizing the validity of arguments for not changing the rule and for changing it to 100 percent was desirable. These commenters proposed percentages ranging from 30 to 80 percent. Some of these comments also recommended sliding scales (e.g., 100 percent for the first \$25,000 worth of materials, smaller percentages for additional amounts).

The Department recognizes that commenters on all sides of this issue have legitimate concerns. Consequently, the Department has concluded that the most appropriate response to these concerns is to raise the percentage of the value of goods purchased through regular dealers to 60 percent. Choosing this percentage will mitigate significantly the problems cited by recipients and suppliers with the current 20 percent figure. As a percentage significantly less than 100, however, it will avoid to a considerable degree the problems cited by other commenters. The Department will reevaluate this decision after two years to determine whether, on the basis of recipients', contractors' and suppliers' experience, it is appropriate to raise it, lower it, or leave it at 60 percent.

The most significant support for counting 100 percent of goods purchased from DBE suppliers came from transit authorities and suppliers to transit authorities. Some of these commenters appeared to believe that there are considerations specific to the transit program (especially for smaller transit authorities) that make 100 percent counting especially appropriate in that program. The Department is seeking comment on whether there should be a different percentage used for the transit program from that used in the rest of the Department's programs (e.g., 100 percent). The Department also seeks comment on whether, if a different percentage is used for the UMTA program, it should be used on a pilot program basis, subject to reevaluation after a certain amount of time, or whether the change should be permanent.



With respect to the "regular dealer" concept, a number of commenters asked for clarification. Some commenters asked whether recipients were required to certify firms as regular dealers. The Department does not intend to require certification, as such. Before a recipient may count (or permit a contractor to count) 60 percent of the value of a product toward a goal, the recipient must ensure that the firm is a regular dealer in the product involved. (Obviously, a firm may be a regular dealer in one product but not in another. It is intended that 60 percent credit be permitted only where the firm is a regular dealer in the product involved in the particular transaction.) This determination could be made on a case-by-case basis or could be done through a certification process. The choice is up to the recipient.

One commenter suggested that, in order that recipients could avoid the administrative burden of determining whether firms were regular dealers, firms should be able to self-certify as regular dealers. The Department believes that this approach would be too open to abuse, and we have not adopted it.

A number of commenters addressed the NPRM's provision concerning suppliers of bulk goods, such as fuel oil dealers. The NPRM said that bulk goods suppliers did not have to keep such products in stock, but must own, operate, or maintain distribution equipment and have, as their principal business, and in their own name, the purchase and sale of the products. Some comments approved this proposal. Some said that even bulk goods suppliers should have to maintain an inventory of the product; others said that distribution equipment should not be required.

A key purpose of the "regular dealer" definition is to distinguish between firms that supply a product on a regular basis to the public and those that supply the product on only an ad hoc basis in relation to a particular contract or contractor. Such indications of being a regular, established, supplier as maintaining an inventory or distribution equipment are very useful in making this distinction. At the same time, business practices may differ for suppliers of different types of goods or in different parts of the country, and an absolute, across-the-board requirement for either the maintenance of an inventory or possession of distribution equipment could be unrealistic.

For this reason, the final rule will permit a supplier of bulk goods to be regarded as a regular dealer if, in addition to meeting other parts of the definition, it either maintains an

inventory of the product in stock or owns or operates distribution equipment. The final rule will not require both an inventory and distribution equipment.

There were few comments on the NPRM's proposals to clarify the counting provisions applicable to contractors who are neither suppliers nor construction contractors. These comments generally supported the NPRM's approach of counting fees and commissions for such participants. One comment suggested that fees and commissions for brokers and manufacturer's representatives should be counted. This is consistent with the Department's intent in the NPRM, and such fees and commissions may be counted under the final rule, provided, of course, that the broker or manufacturer's representative performs a commercially useful function in a given transaction.

Another commenter said that counting fees and commissions would be too administratively burdensome, and suggested a flat 10 percent rate for counting the contributions of firms that were not regular dealers. The Department did not adopt this suggestion. The Department does not believe that its approach is burdensome, and a 10 percent rate might well overstate the credit due such firms in many instances. Consequently, the NPRM provision has been retained with only minor changes.

In implementing the amended rule, recipients should keep in mind the concept of "commercially useful function." According to § 23.47(d), work performed by an MBE, DBE or WBE firm in a particular transaction can be counted toward goals only if the recipient determines that it involves a commercially useful function. That is, in light of industry practices and other relevant considerations, does the MBE, DBE or WBE firm have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the MBE/DBE/WBE program, or is the firm's role a superfluous step added in an attempt to obtain credit toward goals? If, in the recipient's judgment, the firm does not perform a commercially useful function in the transaction, no credit toward goals may be awarded, and the counting provisions of the regulation never come into play.

It should be noted that the question of whether a firm is performing a commercially useful function is completely separate from the question of whether the firm is an eligible MBE, DBE, or WBE. A firm is eligible if it meets the definitional criteria (see §§ 23.5 or 23.62) and ownership and

control requirements (see § 23.53) of the regulation.

The issue of whether an eligible firm performs a commercially useful function arises only in the context of how much, if any, "credit" toward MBE, DBE, or WBE goals can be counted for the firm's participation in a contract (see § 23.47). An eligible firm may perform a commercially useful function on one contract and not on another.

The fact that a firm does not perform a commercially useful function in a certain transaction does not mean that the firm loses eligibility (i.e., that it should be decertified or not recertified, as though it were no longer owned and controlled by its minority, disadvantaged, or women participants), only that no credit can be counted for its participation in the transaction.

Of course, there may be circumstances in which the participation of a firm in transactions in which it performs no commercially useful function may constitute part of a pattern of relationships with non-minority businesses that brings the firm's independence and control into question. In this sense, connection between "no commercially useful function" and program eligibility could exist. There may also be circumstances in which performing no commercially useful function (e.g., in an intentional pass-through scheme) could involve fraud or other disreputable conduct, leading to a firm to being subject to a declaration of non-responsibility, suspension or debarment, or even criminal prosecution.

If the recipient determines that the firm is performing a commercially useful function, the recipient must then decide what that function is. If the commercially useful function is that of a regular dealer, the recipient may then count 60 percent of the value of the product supplied toward MBE, DBE, or WBE goals.

A regular dealer must be engaged in selling the product in question to the public. This is important in distinguishing a regular dealer, which has a regular trade with a variety of customers, from a firm which performs supplier-like functions on an ad hoc basis or for only one or two contractors with whom it has a special relationship.

As noted above, a supplier of bulk goods may qualify as a regular dealer if it either maintains an inventory or owns or operates distribution equipment. With respect to the distribution equipment (e.g., a fleet of trucks), the term "or operates" is intended to cover a situation in which the supplier leases the equipment on a regular basis for its



entire business. It is not intended to cover a situation in which the firm simply provides drivers for trucks owned or leased by another party (e.g., a prime contractor) or leases such a party's trucks on an *ad hoc* basis for a specific job.

If the commercially useful function being performed is not that of a regular dealer, but rather that of delivery of products, obtaining bonding or insurance, procurement of personnel, acting as a broker or manufacturer's representative in the procurement of supplies, facilities, or materials, etc., the counting rules of § 23.47(f) would apply.

Under paragraph (f), for example, a business that simply transfers title of a product from manufacturer to ultimate purchaser (e.g., a sales representative who reinvoices a steel product from the steel company to the recipient or contractor) or a firm that puts a product into a container for delivery would not be considered a regular dealer. The recipient or contractor would not receive credit based on a percentage of the cost of the product for working with such firms.

Subparagraph (f)(1) concerns the use of services that help the recipient or contractor obtain needed supplies, personnel, materials or equipment to perform a contract or program function. Only the fee received by the service provider could be counted toward goals. For example, use of a minority sales representative or distributor for a steel company, if performing a commercially useful function at all, would entitle the recipient or contractor receiving the steel to count only the fee paid to the representative or distributor toward its goal. No portion of the price of the steel would count toward the goal. This provision would also govern fees for professional and other services obtained expressly and solely to perform work relating to a specific contract or program function.

Subparagraph (f)(2) concerns transportation or delivery services. If an MBE, DBE or WBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the recipient or contractor, the commercially useful function it is performing is not that of a supplier, but simply that of a transporter of goods. Unless the trucking company is itself the manufacturer of or a regular dealer in the product, credit cannot be given based on a percentage of the cost of the product. Rather, credit would be allowed for the cost of the transportation service.

Subparagraph (f)(3) applies the same principle to bonding and insurance matters. Contractors often are required

to obtain bonding and insurance concerning their work in DOT-assisted contracts. When they obtain a bond or an insurance policy from an MBE, DBE, or WBE agent, the amount allowable toward goals is not any portion of the face value of the policy or bond or the total premium, but rather the fee received by the agent for selling the bond or insurance policy.

The Department is aware that the rule's language does not explicitly mention every kind of business that works in DOT financial assistance programs. In administering this rule, the Department's operating administrations would, on a case-by-case basis, determine the appropriate regulatory provision to apply in a particular situation.

These provisions would apply to prime contracts and purchases by recipients as well as to subcontracts let by prime contractors. The rule provides that only services required by a DOT-assisted contract are eligible for credit; a DOT-assisted contract, for this purpose, can mean a direct purchase of goods or services by a transit authority as well as by a prime construction contractor under a highway contract. The amendments to § 23.47 apply to all financial assistance programs in the Department (e.g., the airport and intercity rail programs as well as the highway and urban mass transportation programs).

#### Regulatory Process Matters

The Department has determined that this rule does not constitute a major rule under the criteria of Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. Since the regulation simply makes administrative adjustments to an existing program, its economic impacts are expected to be small, and the Department has consequently not prepared a regulatory evaluation.

Since proposed rules have not been issued with respect to the portions of this rule implementing section 106(c) of the STURAA and concerning the definition of Hispanic, the Regulatory Flexibility Act does not apply to these provisions. With respect to the supplier credit and commercially useful function portions of the rule, the Act does apply.

As noted in the NPRM, the Department considered whether the proposal for these amendments would have a significant economic impact on a substantial number of small entities. The entities in question are small businesses who act as suppliers to DOT recipients and contractors. The changes in counting procedures will benefit regular dealers by increasing the credit that

may be counted toward DBE/WBE goals for the purchase of supplies. For businesses that do not perform supply services, the proposal will clarify existing policy that only the fee for their service may be counted toward goals. The overall effect of the proposal will be to increase opportunities for participation in DOT financial assistance programs.

Comments to the rule did not suggest that even these benefits would be of major magnitude, however, and none of the comments suggested that the proposal would have any adverse consequences for small entities. Consequently, the Department certifies that the rule will not have a significant economic effect on a substantial number of small entities.

The portions of the rule which have not previously been the subject of an NPRM concern matters under Federal grants, and hence are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)). In addition, the portions of the rule implementing section 106(c) of the STURAA must be implemented rapidly, in order to ensure that the provisions apply to funds authorized by the Act, as Congress intended. It is reasonable to promulgate the amendment to the definition of Hispanic at the same time as other changes are made to the definition of "socially and economically disadvantaged individuals," in order to avoid confusion by recipients administering the program. For these reasons, the Department has determined that there is good cause to promulgate these portions of the rule without prior notice and comment (see 5 U.S.C. 553(b)(3)) and to make the rule effective immediately, rather than after a 30-day period (see 5 U.S.C. 553(c)(3)).

#### List of Subjects in 49 CFR Part 23

Minority businesses, Highways, Mass transportation.

Issued in Washington, DC on October 6, 1987.

Jim Burnley,

Acting Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation amends 49 CFR Part 23 as follows:

#### PART 23—[AMENDED]

1. The authority citation for Part 23 is revised to read as follows and the authority citation for Subpart D is removed:

Authority: Sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as



amended (49 U.S.C. 1730); sec. 19 of the Urban Mass Transportation Act 1964, as amended (Pub. L. 95-599); Title 23 of the U.S. Code (relating to highways and highway safety); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); The Federal Property and Administrative Services Act of 1949 (49 U.S.C. 471 *et seq.*); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17); Executive Order 11625; Executive Order 12138.

2. Section 23.45(e) is amended by adding the following sentence at the end of the paragraph:

**§ 23.45 [Amended]**

(e) \* \* \* Recipients subject to the disadvantaged business enterprise program requirements of Subpart D of this Part shall compile and update their directories annually. The directories shall include the addresses of listed firms.

3. Section 23.45(f)(3) is added to read as follows:

- (f) \* \* \*
- (3) Recipients covered by the disadvantaged business program requirements of Subpart D of this Part shall, in determining whether a firm is an eligible disadvantaged business enterprise, take at least the following steps:
- (i) Perform an on-site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigation;
  - (ii) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;
  - (iii) Analyze the ownership of stock in the firm, if it is a corporation;
  - (iv) Analyze the bonding and financial capacity of the firm;
  - (v) Determine the work history of the firm, including contracts it has received and work it has completed;
  - (vi) Obtain or compile a list of equipment owned or available to the firm and the licenses of the firm and its key personnel to perform the work it seeks to do as part of the DBE program; and
  - (vii) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program.

4. Section 23.45(g)(4) is revised to read as follows:

**§ 23.45 [Amended]**

(g) \* \* \*

(4) Recipients covered by the disadvantaged business enterprise program requirements of Subpart D of this Part shall establish an overall goal and contract goal for firms owned and controlled by socially and economically disadvantaged individuals. Other recipients shall establish separate overall and contract goals for firms owned and controlled by minorities and firms owned and controlled by women, respectively.

5. Section 23.47 is amended by revising paragraph (e) and by adding a new paragraph (f), to read as follows:

**§ 23.47 [Amended]**

(e) (1) A recipient or contractor may count toward its MBE, DBE or WBE goals 60 percent of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE or WBE regular dealer, and 100 percent of such expenditures to an MBE, WBE, or DBE manufacturer.

(2) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the recipient or contractor.

(3) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

(f) A recipient or contractor may count toward its MBE, DBE, or WBE goals the following expenditures to MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not

excessive as compared with fees customarily allowed for similar services.

(2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

6. Section 23.61(a) is amended by revising the first sentence up to the first comma to read as follows:

**§ 23.61 [Amended]**

(a) The purpose of this subpart is to implement section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17) so that, \* \* \*

7. Section 23.61(b) is amended by removing the words "section 105(f)" and substituting the words "section 106(c)".

8. Section 23.62 is amended by revising the definition of "Act" to read as follows:

**§ 23.62 [Amended]**

"Act" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17).

9. Section 23.62 is amended by removing the period(.) at the end of the definition of "Small business concern," and adding the following words:

"Small business concern" \* \* \* except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$14 million over the previous three fiscal years. The Secretary shall adjust this figure from time to time for inflation.

10. Section 23.62 is amended by adding, in the definition of "Socially and economically disadvantaged individuals," immediately following the words "(or lawfully admitted permanent residents) and who are" the word



"women,"; and by adding, in the definition entitled "(b) Hispanic Americans," immediately after the words "or other Spanish" the words "or Portuguese."

11. Section 23.63 is revised to read as follows:

**§ 23.63 Applicability.**

This subpart applies to all DOT financial assistance in the following categories that recipients expend in DOT-assisted contracts:

(a) Federal-aid highway funds authorized by Title I of the Act;

(b) Urban mass transportation funds authorized by Title I or III of the Act or the Urban Mass Transportation Act of 1964, as amended; and

(c) Funds authorized by Title I, II (except section 203) or III of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) and obligated on or after April 2, 1987.

**Appendix A—[Amended]**

12. The portion of Appendix A, following Subpart D, entitled "Section 23.61 Purpose," is amended in its first sentence, by removing the words "105(f) of the Surface Transportation Assistance Act of 1982," and substituting the words "106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987."; and, in the third sentence, by removing the word "105(f)" in both places where it occurs and substituting the word "106(c)".

13. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing the words "Surface Transportation Assistance Act of 1982," in the first sentence and substituting the words "Surface Transportation and Uniform Relocation Assistance Act of 1987."

14. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by adding the following new paragraphs following the end of the paragraph entitled "small business concerns":

Congress determined, in order to ensure that the DBE program meets its objective of helping small minority businesses become self-sufficient and able to compete in the market with non-disadvantaged firms, that DBE firms should "graduate" from the program once their average annual receipts reached \$14 million.

In implementing this provision, recipients should note that a firm is not "graduated" from the program, and hence no longer an eligible DBE, until its average annual gross receipts over the previous three-year period exceed \$14 million. The fact that a firm exceeds \$14 million in gross receipts in a single year does not necessarily result in "graduation." For example, suppose a firm has the following history:

1985—\$11 million

1986—\$13 million

1987—\$14 million

1988—\$14 million

1989—\$15 million

The firm makes \$14 million in 1987. However, the firm's average annual gross receipts for 1985-87 are \$12.67 million, so the firm remains eligible in 1988. This hypothetical firm would remain eligible in 1989 as well, since its average annual gross receipts for 1986-88 would be \$13.67 million. However, the firm's average annual gross receipts for 1987-89 would be \$14.3 million. As a result, the firm would not be an eligible DBE in 1990.

It should also be pointed out the \$14 million ceiling, like small business size limits under section 3 of the Small Business Act, includes revenues of "affiliates" of the firm as well as the firm itself. This is the import of the "any concern or group of concerns" language. In addition, firms still are subject to applicable lower limits on business size established by the Small Business Administration in 13 CFR Part 121. For example, if SBA regulations say that \$7.5 million average gross annual revenues is the size limit for a certain type of business, that size limit, rather than the overall \$14 million ceiling, determines whether the firm qualifies in terms of its size to be a DBE.

15. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by adding, at the end of the list of designated groups in the fourth sentence of the paragraph entitled "Socially and economically disadvantaged individuals", following the words

"Asian Indian Americans," the words "or women."

16. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing the words "Burma, Thailand, and Portugal" from the last sentence of the paragraph entitled "Socially and economically disadvantaged individuals" and from the first sentence of the paragraph immediately following the paragraph entitled "Socially and economically disadvantaged individuals" and substituting, in each case, the words "Burma and Thailand."

17. The portion of Appendix A, following Subpart D, entitled "Section 23.62 Definitions" is amended by removing the words "non-minority women," from the second sentence of the last paragraph.

18. The portion of Appendix A, following Subpart D, entitled "Section 23.63 Applicability," is amended by revising the second paragraph to read as follows:

The first category of program funds to which Subpart D applies is Federal-aid highway funds authorized by Title I of the Act. The second category is urban mass transportation funds authorized by Title I (i.e., interstate transfer and substitution funds) or Title III of the Act. The third category is funds authorized by Title I, Title II (except section 203), or Title III of the Surface Transportation Assistance Act of 1982 which were obligated on or after April 2, 1987 (the enactment date of the STURAA).

19. The portion of Appendix A, following Subpart D, entitled "Relationship Between Subpart D and the Remainder of 49 CFR Part 23" is amended by revising the second paragraph to read as follows:

With respect to FHWA and UMTA-assisted programs, recipients will now set only one DBE goal, at both the overall and contract goal level. There are no longer separate DBE and WBE goals. Rather, the single DBE goal applies to all DBEs, whether they are owned and controlled by minorities or by women.

[FR Doc. 87-24233 Filed 10-16-87; 10:09 am]

BILLING CODE 4910-62-M



# Proposed Rules

Federal Register

Vol. 52, No. 203

Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1098 and 1007

[Docket Nos. AO-184-A52 and AO-366-A29]

#### Milk in Nashville, Tennessee, and Georgia Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This hearing is being held to consider several proposals to amend the Nashville, Tennessee, and Georgia milk orders. The principal proposal would insure that a pool distributing plant physically located in the Nashville marketing area would be regulated in that market irrespective of the market in which a plurality of its fluid milk products may be distributed. Another proposal would establish a plus location adjustment of 8.5 cents per hundredweight for milk received at a plant located in a six-county area of Tennessee southeast of Nashville. Proponent contends that the modifications are needed to reflect changed marketing conditions.

**DATE:** The hearing will convene at 9:30 a.m., local time, on November 3, 1987.

**ADDRESS:** The hearing will be held at the Park Suite Hotel, 10 Century Boulevard, Nashville, Tennessee 37214, (615) 871-0033.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the

provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Park Suite Hotel, 10 Century Boulevard, Nashville, Tennessee 37214, beginning at 9:30 a.m., local time, on November 3, 1987, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nashville, Tennessee, and Georgia marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as small businesses. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

#### List of Subjects in 7 CFR Parts 1098 and 1007

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1098 and 1007 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Malone & Hyde Dairy:

#### Proposal No. 1

In § 1098.7, revise paragraph (d)(2) to read as follows:

#### § 1098.7 Pool plant.

(d) \* \* \*

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tennessee, marketing area: Provided,

(i) That such distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant with out regard to its qualifying as a pool plant under this order, subject to the proviso of this paragraph;

(ii) On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;



(iii) A plant located in the marketing area that qualifies pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition shall be subject to all the provisions of this part so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location even though the plant may have greater route disposition in the other marketing area than in the Nashville marketing area.

#### Proposal No. 2

In § 1098.52, redesignate paragraphs (b) and (c) as paragraphs (c) and (d), and add a new paragraph (b) to read as follows:

#### § 1098.52 Plant location adjustment for handlers.

\* \* \*

(b) For such milk that is physically received from producers or from a handler described in § 1098.9(c) at plants located in the Tennessee counties of Cannon, Coffee, DeKalb, Rutherford, Warren, and White, the price shall be adjusted by plus 8.5 cents per hundredweight.

#### Proposal No. 3

In § 1007.7, revise paragraph (e)(3), and add a new paragraph (e)(4) to read as follows:

#### § 1007.7 Pool plant.

\* \* \*

(e) \* \* \*

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraphs (a) or (b) of this section and, except as provided in paragraph (e)(4) of this section, a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraphs (a) or (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

(4) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and

from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Georgia marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Georgia order.

Proposed by the Dairy Division,  
Agricultural Marketing Service

#### Proposal No. 4

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing orders, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture  
Office of the Administrator, Agricultural Marketing Service  
Office of the General Counsel  
Dairy Division, Agricultural Marketing Service (Washington office only)  
Office of the Market Administrator, Nashville, Tennessee, and Georgia Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: October 16, 1987.

J. Patrick Boyle,  
Administrator.

[FR Doc. 87-24391 Filed 10-20-87; 8:45 am]

BILLING CODE 3410-02-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 941, 965, and 968

[Docket No. R-87-1353, FR-2231]

#### Pre-emption of Certain State-Determined Prevailing Wage Rates Applicable to Public Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed Rule.

**SUMMARY:** HUD proposes to pre-empt the State wage rate that would be applicable to any trade employed on a public or Indian housing project however the State wage rate exceeds the corresponding Federally-determined wage rate for the trade. Specifically, HUD would require bid documents and contracts let by the HUD-assisted public housing agency or Indian housing authority for the project to contain a statement that any State rate that exceeds the corresponding Federal rate is inapplicable and shall not be enforced. In addition, the public housing agency or Indian housing authority would not be required to pay the higher State wage rates to its own employees who may be engaged on the project. The proposed rule would prohibit enforcement of the State requirements regarding higher State rates on the project. The proposed rule would also pre-empt wage rates that are determined to be prevailing under Indian tribal law and exceed the applicable Federal wage rates.

**DATE:** Comments are due December 21, 1987.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Justin L. Logsdon, Assistant to the Secretary of Labor Relations, Room 7106, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5370. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** The United States Housing Act of 1937 (Act) provides for payment of not less than Federally-determined prevailing wage



rates to laborers and mechanics employed in the development and operation of lower income housing projects administered by public housing agencies and Indian housing authorities. Under the laws of some States, wages determined by State or local governments or agencies to be prevailing must be paid on public works or improvements including HUD-assisted public and Indian housing projects. In a small number of the States with these requirements, the wages determined under State law to be prevailing substantially exceed the wages that the Federal government has determined to be prevailing for the same workers, thus greatly increasing the cost of developing or operating Federally-assisted public and Indian housing.

Under the Act, HUD provides a variety of assistance to public housing agencies (PHAs) and Indian housing authorities (IHAs) that develop and administer lower income housing projects, including loans, annual contributions that assist in amortizing development costs, annual contributions for the operation of the project, and assistance for improving the physical condition and upgrading the management and operation of projects under the Comprehensive Improvement Assistance Program (CIAP). Starting in fiscal year 1987, under Title I of HUD's appropriation for fiscal year 1987,<sup>1</sup> HUD is also providing grants in lieu of loans; the grants are made on substantially the same terms as those previously set forth in annual contributions contracts. With few exceptions, HUD provides most or all of the financial assistance for these programs and projects.

Section 12 of the U.S. Housing Act mandates in part as follows:

Any contract for loans, annual contributions, sale, or lease pursuant to the Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary [of HUD], shall be paid to \* \* \* all maintenance laborers and mechanics employed in the operation \* \* \* of the lower income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act [40 U.S.C. 276a et seq.] \* \* \* shall be paid to all laborers and mechanics employed in the development of the project involved \* \* \*

<sup>1</sup> Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

For project development, section 12 thus establishes the Davis-Bacon prevailing wage rate as determined by the Secretary of Labor as the minimum wage rate for laborers and mechanics. Project development includes CIAP and other modernization work except for non-routine maintenance (as defined in 24 CFR § 968.3), as well as construction of new projects. Section 12 also establishes the prevailing rate determined by the Secretary of HUD as the minimum rate for project operation, which includes CIAP nonroutine maintenance work as well as routine project maintenance. In the case of wage rates for project operation, the statute gives the Secretary of HUD the option of adopting a State or locally-determined prevailing wage rate rather than independently determining the prevailing rate, but it does not mandate adoption of any State or locally-determined wage rate. The term "State" is defined in section 3(b)(8) of the U.S. Housing Act to include Indian tribes.

#### Legal Framework for Pre-emption

The provisions of Section 12 impose no cap on the wage rates that may be paid in the development or operation of a project, nor does section 12 pre-empt the imposition of higher wage rates determined under State law. While Section 12 does not itself pre-empt higher State rates, HUD's proposal to pre-empt such higher rates is made under its responsibility to carry out the Congressional purpose of the United States Housing Act as a whole, and is based on its determination that the imposition of higher State rates on public and Indian housing projects assisted under the Act would stand as an obstacle to the execution of the purposes and objectives of the Act.

The doctrine of pre-emption of State laws was recently summarized by the United States Supreme Court as follows:

It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that "interfere with, or are contrary to" federal law. *Gibbons v. Ogden*, 9 Wheat. 1, 211 (1824) (Marshall, C.J.). Under the Supremacy Clause, federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to pre-empt state law by so stating in express terms. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). In the absence of express pre-emptive language, Congress' intent to pre-empt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Pre-emption of a whole field also

will be inferred where the field is one in which "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Ibid*; see *Hines v. Davidowitz*, 312 U.S. 52 (1941).

Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, *supra*, at 67. (*Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712-13 (1985))

The U.S. Housing Act does not expressly preempt State prevailing wage rate statutes as applied to public and Indian housing projects assisted by HUD under the Act. Rather, as more fully discussed below, the rule that HUD is proposing is based on HUD's view that the State prevailing wage laws in question conflict with the U.S. Housing Act in that they stand as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." In this regard, the Supreme Court has noted that "[f]ederal regulations have no less pre-emptive effect than federal statutes." *Fidelity Federal Savings & Loan Association v. De La Cuesta*, 458 U.S. 141, 153 (1982). "A preemptive regulation's force does not depend on express congressional authorization to displace state law. . . ." *Id.* at 154.<sup>2</sup>

<sup>2</sup> The Washington Supreme Court, in a 1986 opinion, ruled that a State law mandating payment of State-determined prevailing rates was applicable to the HUD-funded construction of a Seattle Housing Authority project. *Drake v. Malvik & Olsen Electric, Inc.*, No. 51398-8, *en banc*, October 16, 1986. HUD was not a party to this litigation, however, and the Seattle Housing Authority, participating as a Respondent, raised no preemption issue and the majority opinion did not address the question. The decision instead was based on an interpretation of the reach of the State statute. Nevertheless, a dissenting opinion argued that the federally mandated wage rates reflected in the Housing Authority's annual contributions contract with HUD should be regarded as preempting the State statute.

This proposed rule would provide regulatory clarification that HUD's established wage rates applicable to HUD-assisted projects do in fact preempt conflicting State-mandated rates. In the fact situation presented in the *Drake* case, the rule would call for the opposite result, *i.e.*, the State statute would not be applied to contracts providing for application of a lower, federally determined, wage rate.



### Purpose and objectives of the United States Housing Act; HUD's Authority under the Act

HUD is the agency responsible for establishing and enforcing the regulatory and contractual scheme authorized to carry out the purpose of the U.S. Housing Act. The overall purpose of HUD's assistance under the Act is to maintain the lower income character of public and Indian housing projects and assure that they continue to be available to serve lower income families. See, e.g., United States Housing Act, sections 5, 9 and 14. HUD has an obvious interest in assuring the economical and efficient development and operation of projects assisted under the Act. The strength of HUD's interest lies in the fact that, with few exceptions, it is the primary source of financing for the public and Indian housing projects assisted under the Act.

Until recently, one way in which Congress authorized HUD to control the cost of public and Indian housing to assure that its funds serve the purpose of the statute was through the establishment, by locality, of unit prototype costs for the construction and equipment of projects assisted under the Act, as provided by section 6(b) of the Act. The fiscal year 1986 HUD appropriation act (Pub. L. No. 99-160, 99th Cong., 1st Sess. (1985)) repealed section 6(b), eliminating HUD's authority to establish prototype costs. However, the Congressional reports indicate that the repeal was enacted because of dissatisfaction with the process by which HUD established prototype costs and the view that low prototype costs prevented the construction of a greater number of units in large cities. See H.R. Rep. No. 99-212, 99th Cong., 1st Sess. 4-5 (1985); S. Rep. No. 99-129, 99th Cong., 1st Sess. 10 (1985). In recommending repeal of section 6(b), the Senate Committee on Appropriations affirmed that "[t]he Department is still expected to approve public housing development applications on the basis of reasonable criteria designed to promote economy and the provision of housing for all sizes of families." S. Rep. No. 99-129 at 10. More generally, the Committee observed that "[w]ithin the extreme budgetary constraints on the Federal budget, \* \* \* the Committee must maintain its priorities to funding programs which directly serve as many families as possible, and within those that can be served, to target assistance to those families most in need."

*Id.* at 12.

Congress has manifested its concern with economy in the development and

operation of public and Indian housing projects, and its desire that Federal funds provided under the United States Housing Act serve the greatest number of families, in several different provisions of the Act.

For example, section 5(b) of the Act authorizes the Secretary to prescribe regulations fixing the maximum amount of annual contributions for debt service available under different circumstances, giving consideration to cost as well as other factors bearing on the amounts and periods of assistance needed to achieve and maintain low rentals; the Secretary may also provide for rates of contributions based upon development, acquisition, or operation costs and other factors. Under section 5(c)(5), the Secretary may approve conversion of public (and Indian) housing development authority for use under the CIAP program or for acquisition and rehabilitation if the public housing agency (or Indian housing authority) certifies that the assistance would be "more effectively" used for those purposes. Section 5(f) authorizes the amendment or supersession of any contract for annual contributions or loans "[w]hen the Secretary finds that it would promote economy or be in the financial interest of the Federal Government or is necessary to assure or maintain the lower income character of the \* \* \* projects involved."

Section 6(a) authorizes the inclusion in any contract or agreement made pursuant to the Act of such covenants, conditions, or provisions as the Secretary may deem necessary to insure the lower income character of the project. In addition, section 6(c)(4) requires that every contract for annual contributions must provide for compliance by the public housing agency (or Indian housing authority) with procedures and requirements prescribed by the Secretary to assure that "sound management practices" will be followed in the operation of the project. Section 6(h) permits a contract for new construction to be entered into on or after October 1, 1983, only if the public housing agency demonstrates to the satisfaction of the Secretary that the cost of new construction is less than the cost of acquisition or acquisition and rehabilitation would be.

Section 9, concerning annual contributions for the operation of lower income housing projects, provides that such annual contributions "shall not exceed the amounts which the Secretary determines are required (A) to assure the lower income character of the projects involved, (B) to achieve and maintain adequate operating services

and reserve funds", and (C) to provide certain start-up Indian housing administrative costs. Section 9 also requires that for purposes of making such annual contributions, the Secretary must establish standards for costs of operation and reasonable projections of income, taking into account, among other things, the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a well-managed project.

While many of the cited provisions of the United States Housing Act authorize specific measures or procedures to be undertaken by HUD to promote economical and efficient use of assistance under the Act, they illustrate a general concern for economical use of Federal funds provided under the Act, and HUD is not limited to these specific measures. HUD has been given broad authority to carry out the purposes of the Act. For example, as noted above, section 6(a) of the Act authorizes the Secretary to include contractual provisions he deems necessary to insure the lower income character of the project. Section 14 of the Act, which establishes the CIAP program, authorizes the Secretary to issue such rules and regulations as may be necessary to carry out the provisions and purposes of that Section. More generally, section 7(d) of the Department of Housing and Urban Development Act gives the Secretary authority to make such rules and regulations as may be necessary to carry out his functions, powers, and duties from whatever statute derived.

### Application of State Prevailing Wage Statutes to Public and Indian Housing Projects

While many States have "Little Davis-Bacon Acts" that require the payment of prevailing wages determined under State law to laborers and mechanics employed on various public works projects, fewer than half of the States apply State prevailing wage requirements to laborers and mechanics on HUD-assisted public and Indian housing projects. Of the States that do apply these wage rates, a small number have sought to impose State-determined wage rates that exceed the wages determined by the Department of Labor or HUD to be prevailing on particular projects. It is only in this small number of States that the proposed rule would preempt the State-determined rates on particular projects.

A State that purports to apply State-determined wage rates that exceed Federally-determined rates to PHAs is



New York. For seven common trades on projects administered by 31 PHAs in Southern New York, data compiled in 1985 by the HUD New York Office indicated a substantial difference between New York State-determined prevailing wage rates and rates determined both by the U.S. Department of Labor under the Davis-Bacon Act and by HUD. The following chart indicates the average percentage by which the New York State-determined wage rates exceeded the Davis-Bacon wage rates (left-hand column) and the HUD-determined wage rates for trades performing HUD-assisted non-routine maintenance work (right-hand column):<sup>3</sup>

	Percent- age by which State rates exceed Davis- Bacon rates	Percent- age by which State rates exceed HUD rates
Laborers.....	14	41
Operating Engineers.....	9	71
Plumbers.....	12	80
Bricklayers.....	48	146
Carpenters.....	9	78
Electricians.....	96	69
Painters.....	20	57

Similar data were compiled with respect to six trades on projects administered by 47 PHAs in the jurisdiction of the HUD Buffalo Office, which extends across all of the New York State except the southern portion. The results were as follows:<sup>4</sup>

<sup>3</sup> Not all the PHAs had Davis-Bacon, HUD-determined, and State-determined wage rates for all the trades; the average percentages by which State-administered wage rates exceed the two Federal rates for each trade are thus based on the average of all the State-rates for a given trade compared to an average of all the Davis-Bacon wage rates and an average of all the HUD-determined wage rates.

As discussed below in the text of this preamble, HUD rates include only the basic hourly rate and exclude any prevailing fringe benefits. It is HUD's understanding that nationally, fringe benefits average approximately 29 percent of total compensation for craft workers and for handlers, equipment cleaners, helpers and laborers, and 23 percent for service workers (including building maintenance workers and janitors). The right-hand column of the chart, however, is based on data that compared the average of total State rates to the average of HUD-determined rates that do not include fringe benefits. Comparison of the average of State rates excluding fringe benefits to the average of HUD rates would yield somewhat lower percentages.

<sup>4</sup> Previous footnote applies to this chart as well.

	Percent- age by which State rates exceed Davis- Bacon rates	Percent- age by which State rates exceed HUD rates
Laborers.....	74	84
Operating Engineers.....	87	113
Plumbers.....	63	81
Bricklayers.....	36	71
Carpenters.....	55	62
Electricians.....	36	31

These data demonstrate that in the case of most New York State PHAs surveyed, State-determined wage rates exceeded the rates determined to be applicable under Federal law by a substantial percentage.

The State of California also requires imposition of State-determined wage rates on HUD-assisted public housing projects. Data collected by HUD on a sample of California PHAs in 1985 indicated that the difference between Davis-Bacon and State-determined wage rates was typically several percentage points, with the Davis-Bacon wage rates sometimes exceeding the State-determined rates. However, wage rates on certain projects showed a significant difference between the two rates. For example, on a public housing new construction project in Riverbank, California, State-determined wage rates averaged 31 percent higher than the Davis-Bacon wage rates, due primarily to State-determined wage rates for several classes of power equipment operators that exceeded Davis-Bacon rates for those classes by between 90 percent and 202 percent. A CIAP project in San Buenaventura involved State-determined rates that exceeded the applicable HUD-determined rates by an average of 70 percent.<sup>5</sup>

In the State of Wisconsin, State law provides for prevailing wage rates to be determined by the Department of Industry, Labor, and Human Relations, except that a municipality may obtain an exemption when a municipal enactment would result in standards as high or higher than those that would be followed by the State department. HUD data from 1985 indicate that in three Wisconsin localities, wage rates set by the locality pursuant to State law exceeded applicable HUD-determined wage rates by substantial percentages.<sup>6</sup> In Milwaukee, a project to replace kitchen cabinets and counter tops involved classifications for which the

<sup>5</sup> At the time the HUD wage rates on this project were determined, fringe benefits were included in the HUD rate as well as the State rate.

<sup>6</sup> HUD-determined wage rates do not include fringe benefits. See discussion in footnote 3, above.

locally-determined wage rates exceeded the HUD-determined rates by an average of 22 percent. A window replacement contract in Green Bay involved local rates that exceeded HUD-determined rates by an average of 30 percent. Finally, on a renovation project in Madison, locally-determined rates exceeded the HUD-determined rates by an average of 19 percent.

In the State of Kentucky, rates determined under State law and obtained in 1985 for a project in Newport were 7 percent and 70 percent higher than the applicable Davis-Bacon wage rates for the laborers and plumbers, respectively, that were to be employed on the project. This resulted in State rates that averaged 39 percent higher than the Davis-Bacon rates for the project.

#### Basis for Pre-emption

State and local wage rates such as those described above have a serious negative effect on the Department's ability to carry out the Congressional purposes embodied in the United States Housing Act. They inhibit or prevent the use of assistance provided under the Act in an efficient and economical manner to assure that public and Indian housing projects are available to the greatest number of lower income families. The imposition on a project of State wage rates that exceed the Federally-determined prevailing wage rates has the effect of establishing an excessive floor on the wages that any contractor, PHA, or IHA must pay its workers on the project. These higher wage costs must ultimately be funded with HUD assistance under the Act through the acceptance of higher bids or proposals on the project or the direct payment of higher wages by the PHA or IHA to its workforce. Since Federal funds are limited, the number of lower income housing units to be constructed, maintained, modernized or repaired would be lowered, thus frustrating the purpose of the Act. Another, less likely possibility is that, where bids or proposals are solicited, the bids or proposals would remain close to the overall contract price level that would obtain without imposition of the higher State wage rates, but this result would be achieved by contractors that have made a corresponding cutback in the cost and quality of materials and supplies. Thus poorer-quality work would result from contractors being required to divert a greater proportion of the contract proceeds to labor expenses. This result of the imposition of excessive State wage rates is equally inimical to the purposes of the United



States Housing Act. The Department believes that the determination by the Federal Government of prevailing wage rates that are lower than the State-determined rates on a project indicates that in most if not all cases, actual labor costs in the local market are in fact lower than the State rates and these lower labor costs will be reflected in lower bids or proposals for public and Indian housing work and lower PHA or IHA personnel costs. Lower costs will enable the limited Federal funds available under the Act to serve more lower-income families and construct, maintain, modernize and repair more lower-income housing units.

Accordingly, the Department proposes to pre-empt the application and enforcement of higher State- or locally-mandated wage rates on projects assisted by HUD under the Act. Under the proposal, a State or local wage rate would not apply to a project if the State- or locally-determined rate for a trade to be used on the project exceeds the corresponding Federally-determined rate. Any bid documented for project work that is otherwise subject to State law requiring payment of State- or locally-determined prevailing wage rates would be required to contain a statement that whenever any State- or locally-determined rate exceeds the corresponding Federally-determined wage rate, the State- or locally-determined rate is inapplicable to the contract and shall not be enforced. In addition, the PHA or IHA would not be required to pay its own employees engaged on the project at higher State wage rates. Because some States take the position that a contractor is responsible for payment of the State- or locally-determined wage rates even where they do not appear in the contract as required, and might hold a contractor responsible for higher State rates despite the contractual clause declaring them inapplicable, the proposed rule would also prohibit enforcement of such rates against contractors or subcontractors. The proposed rule would also prohibit enforcement of such rates against PHAs or IHAs.

The proposed rule has been drafted to take into account situations in which a state wage rate includes a determination of prevailing fringe benefits as well as a prevailing basic hourly rate of compensation, but the HUD-determined prevailing wage rate, where applicable, does not include fringe benefits. These situations may arise because HUD-determined prevailing wage rates are limited in all cases to basic hourly rates without consideration of fringe benefits. In these situations, comparison of a

State rate that includes fringe benefits with a HUD wage rate that does not could exaggerate the cost of applying the State-determined wage rates. Accordingly, the rule would provide that fringe benefits determined under State law will be excluded from the comparison with the HUD-determined wage rate. In that situation, pre-emption of the entire State-determined rate (both fringe benefits and the basic hourly rate) would occur if the basic hourly rate determined under State law, exclusive of fringe benefits, exceeds the HUD-determined rate.<sup>7</sup>

The proposed rule would only affect the applicability to public and Indian housing projects of State law requirements for the payment of wage rates determined by State or local governments or agencies to be prevailing. It would not affect the applicability of wage rates established in collective bargaining agreements with a PHA or IHA or its contractors, regardless of whether those rates equal or exceed rates determined under State or Federal law. (No less than the Federal wage rate must be paid even if a collective bargaining agreement provides for less than the Federal rate.) Nor does this proposed rule impose a cap on wages that the PHA or IHA or its contractors may choose to pay independent of State law, or limit HUD assistance where wage rates in excess of the Federal rates have been paid.

The proposed rule would apply to IHAs and to tribal prevailing wage laws since some Indian housing projects may be subject to State or tribal prevailing wage laws.

#### Other Matters

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. While the proposed rule could affect the wage rates payable by small business construction firms, or the competitive position of such firms that choose to continue to pay higher wage rates that would no longer be required, it would only affect firms bidding on certain PHA and IHA projects in the small number of States with applicable rates exceeding

<sup>7</sup> While situations may also occur in which a State rate includes fringe benefits and the corresponding Davis-Bacon wage rate does not, a Department of Labor decision not to include fringe benefits represents a determination that fringe benefits do not in fact prevail in the locality; i.e., that 50 percent or more of the employees in a craft receive no fringe benefits. It is therefore appropriate to compare State wage rates that include fringe benefits directly with Davis-Bacon rates regardless of whether the Davis-Bacon rates include fringe benefits.

the corresponding Federal rates, and contracts for work on such PHA and IHA projects would generally comprise only a part of the firms' total business.

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not: (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as Sequence Number 1037 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362), under Executive Order 12291 and the Regulatory Flexibility Act.

Accordingly, 24 CFR Parts 905, 941, 965 and 968 would be amended as follows:

#### PART 905—INDIAN HOUSING

1. The citation of authority for Part 905 would continue to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) would be added to § 905.211, as follows:

#### § 905.211 Contracts in connection with development.

(d) (1) A prevailing wage rate determined under State or tribal law shall be inapplicable to the development of a Project whenever:

(i) The development of the Project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and



(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State or tribal law to be prevailing with respect to any trade classification employed in the development of a Project exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a. *et seq.*) to be prevailing in the locality with respect to such trade classification.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for development of the Project shall include a statement that any prevailing wage rate determined under State or tribal law to be prevailing with respect to any trade classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The IHA itself shall not be required to pay any prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the Project; and

(iii) No prevailing wage rate determined under State or tribal law and described in paragraph (d)(1)(ii) shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the development of the Project.

(3) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after (insert effective date) and to any work performed by employees of an IHA on or after (insert effective date).

3. A new § 905.313 would be added, as follows:

**§ 905.313 Preemption of State or tribal prevailing wage requirements.**

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to the maintenance or improvement of a Project whenever:

(1) The maintenance or improvement of the Project is otherwise subject to

State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to any trade or position classification employed in the maintenance or improvement of a Project exceeds whichever of the following is applicable: (i) the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276 *et seq.*) to be prevailing in the locality with respect to such trade classification; or (ii) the wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position classification exceeds the wage rate determined by the Secretary of Labor or HUD:

(A) where a rate determined by the Secretary of Labor is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor; and

(B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the IHA and any contract executed by the IHA for maintenance or improvement of the Project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to any trade or position classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade classification; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to

be prevailing in the locality with respect to such trade or position classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the maintenance or improvement of the Project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced against the IHA or any of its contractors or subcontractors with respect to employees engaged in the maintenance or improvement of the Project.

(c) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of an IHA on or after [insert effective date].

**PART 941—PUBLIC HOUSING DEVELOPMENT**

4. The citation of authority for Part 941 would continue to read as follows:

**Authority:** Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. A new paragraph (d) would be added to § 941.503, as follows:

**§ 941.503 Construction requirements.**

(d)(1) A prevailing wage rate determined under State law shall be inapplicable to the development of a project whenever:

(i) The development of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State law to be prevailing with respect to any trade classification employed in the development of a project exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade classification.



(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development of the project shall include a statement that any prevailing wage rate determined under State law to be prevailing with respect to any trade classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever such prevailing wage rate exceeds the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The PHA itself shall not be required to pay any prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the project; and

(iii) No prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the development of the project.

(3) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of a PHA on or after [insert effective date].

#### **PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION**

6. The citation of authority for Part 965 would continue to read as follows:

Authority: Secs. 2, 3, 6, and 9, U.S. Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. A new § 965.101 would be added in Subpart A, as follows:

#### **§ 965.101 Pre-emption of State prevailing wage requirements with respect to maintenance and operation of projects.**

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to the maintenance and operation (including modernization) of a project whenever:

(1) The maintenance and operation of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(2) The wage rate determined under State law to be prevailing with respect to any trade or position classification employed in the maintenance and operation of a project exceeds whichever of the following is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. For the purpose of ascertaining whether a wage rate determined under State law for a trade or position classification exceeds the wage rate determined by the Secretary of Labor or HUD: (A) where a rate determined by the Secretary of Labor is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for maintenance and operation of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to any trade or position classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) to any of its own employees who may be engaged in the maintenance and operation of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the maintenance and operation of the project.

(c) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of a PHA on or after [insert effective date].

#### **PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM**

8. The citation of authority for Part 968 would continue to read as follows:

Authority: Secs. 5 and 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c and 1437l), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. A new § 968.19 would be added, as follows:

#### **§ 968.19 Pre-emption of State or tribal prevailing wage requirements.**

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to the modernization of a project whenever:

(1) The modernization of the project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State, local, or tribal government or agency to be prevailing; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to any trade or position classification employed in the modernization of a project exceeds:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) in the case of non-routine maintenance, the wage rate determined by the Secretary of HUD to be prevailing



in the locality with respect to such trade or position classification. For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position classification exceeds the wage rate determined by the Secretary of Labor or HUD:

(A) where a rate determined by the Secretary of Labor is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor; and

(B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(2) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA or IHA and any contract executed by the PHA or IHA for modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to any trade or position classification employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade classification; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position classification. Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA or IHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) to any of its own employees who may be engaged in the modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) shall be enforced

against the PHA or IHA or any of its contractors or subcontractors with respect to employees engaged in the modernization of the project.

(c) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after [insert effective date] and to any work performed by employees of a PHA or IHA on or after [insert effective date].

Date: September 23, 1987.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

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BILLING CODE 4210-33-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 122

[OW-FRL-3248-9]

#### National Pollutant Discharge Elimination System Permit Regulations: Suspension of Existing Application Deadlines for Group I and Group II Storm Water Point Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Today's rulemaking proposes to suspend the existing regulatory deadlines for submittal of Group I and Group II storm water permit applications. It is based upon Congress' enactment, on February 4, 1987, of the Water Quality Act of 1987 (WQA), which revised the statutory scheme for the regulation of storm water point source discharges, as well as many other aspects of the Clean Water Act. Section 405 of the WQA establishes, inter alia, outside deadlines for (1) issuance of regulations establishing storm water permit application requirements; (2) submission of storm water permit applications; and (3) issuance of storm water permits.

The WQA requires that, under the National Pollutant Discharge Elimination System (NPDES) permit program, permit applications must be filed no later than three years after enactment of the Act (i.e., February 4, 1990) for storm water discharges associated with industrial activity and storm water discharges from large municipal separate storm sewer systems, and no later than five years after enactment of the Act (i.e., February 4, 1992) for storm water discharges from

medium-sized municipal separate storm sewer systems. Ordinarily, NPDES permits cannot be required until October 1, 1992, for other storm water discharges.

The existing NPDES regulations divide discharges from storm water point sources into Group I and Group II discharges and establish application deadline of December 31, 1987, for Group I point sources and June 30, 1989, for Group II point sources.

Today's rulemaking deals only with the proposed suspension of these regulatory deadlines. Substantive permit application requirements for all storm water point sources and new deadlines will be established in later Agency rulemakings.

Following completion of the public comment period and consideration of all public comments received, the Agency will proceed with final rulemaking on this proposed suspension.

**DATES:** Comments must be submitted on or before November 20, 1987.

**ADDRESSES:** Comments may be submitted to: George Young, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** George Young, Telephone: (202) 475-9539; or Dell Perelman, Telephone: (202) 475-7458.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

For over a decade, EPA has attempted to formulate an appropriate means of regulating storm water point source discharges. Today's preamble discussion deals only with the deadline for submitting storm water permit applications. For more detailed background and discussion on the storm water issue see:

- 49 FR 37998 (September 16, 1984)
- 50 FR 6939 (February 19, 1985)
- 50 FR 9362 (March 7, 1985)
- 50 FR 32548 (August 12, 1985)
- 50 FR 35200 (August 29, 1985)
- 50 FR 37701 (September 17, 1985)

Prior to the issuance of a final rule on September 26, 1984, (49 FR 37998), the NPDES regulations did not specify a particular date for the submission of storm water permit applications. Storm water point sources were treated the same as all other point sources and were required to submit an application for an NPDES permit at least 180 days prior to the commencement of discharge. All existing point sources were required to have NPDES permits or be considered in violation of section 301 of the Clean



Water Act for discharging pollutants to waters of the United States without a permit.

In 1982 EPA had proposed, consistent with a Settlement Agreement with industry litigants, a number of changes to the NPDES storm water provisions. The proposal provided for a permit application deadline of six months from the promulgation date of the final rule. The 1984 final rule divided storm water point sources into two groups (Group I and Group II) with different application requirements. (Briefly, Group I consists of municipal storm water sewers located in an urbanized area as designated by the Bureau of the Census, storm water point sources located at an industrial plant or in plant-associated areas, storm water point sources subject to effluent limitations guidelines, new source performance standards or toxic pollutant effluent standards, and storm water point sources designated by EPA or an NPDES State. Group II consists of all other storm water point sources.) The 1984 final rule also set a deadline of six months from the effective date of the regulations (i.e., April 26, 1985) for the submission of all storm water permit applications.

Many members of the regulated community immediately asserted that the September 1984 rule imposed an application deadline that was impossible to meet for a variety of reasons, one of which was that many dischargers were located in areas where collecting representative storm water samples during the winter months was impossible. Thus, dischargers indicated that more time was necessary to generate a representative quantitative storm water sample.

After considering the concerns of the regulated community, the Agency proposed in a Federal Register notice on March 7, 1985, to extend the application deadline to December 31, 1985 (50 FR 9362). In addition, EPA sought comment on whether to postpone the application deadline for Group II dischargers another year, until December 31, 1986, in order to allow EPA and the NPDES States to focus their resources on the Group I dischargers, which are more likely to be environmentally significant. EPA also proposed to change the contents of permit applications for Group I dischargers.

After reviewing and considering the public comments received on the deadline issue, the Agency determined that storm water dischargers should be given additional time to prepare and submit permit applications. Thus, the deadline was extended to December 31, 1987, for Group I storm water point sources and June 30, 1989, for Group II

storm water point sources (50 FR 35200, August 29, 1985). The Agency's decision to extend the deadline was based upon the time necessary to promulgate revised final substantive application requirements and the time needed to gather and analyze data and prepare an application once the requirements were issued. The Agency established separate deadlines for Group I and Group II point sources to allow the EPA Regional Offices and the NPDES States to focus limited resources on the higher priority Group I dischargers while at the same time preparing for the large number of Group II permit applications that would be received. EPA has not yet issued the final rule establishing the revised permit application requirements.

## II. Congressional Debate and Action

At the same time that EPA was evaluating the appropriate means to regulate storm water point source discharges and the proper permit application deadlines, the Congress was examining the storm water issue in the course of the Clean Water Act reauthorization. Both the Senate and the House of Representatives, in the summer of 1985, passed bills amending the Clean Water Act that contained provisions addressing the storm water issue. The separate House and Senate bills were reconciled in Conference Committee in 1986, and on February 4, 1987, the Water Quality Act of 1987 (WQA) became law after being passed by Congress early in its 100th Session. Section 405 of the WQA contains storm water requirements that reflect a compromise between the 1985 House and Senate bills.

Section 405 of the WQA, amending section 402 of the Clean Water Act, requires EPA to promulgate final regulations governing storm water permit application requirements for storm water discharges associated with industrial activity and storm water discharges from large municipal separate storm sewer systems (defined in the WQA as discharges from a municipal system serving a population of 250,000 or more) "no later than two years" after the date of enactment (i.e., no later than February 4, 1989) and "no later than four years" after the date of enactment (i.e., no later than February 4, 1991) for discharges from medium-sized municipal separate storm sewer systems (defined in the Act as municipal systems serving a population of 100,000 or more but less than 250,000). In addition, section 405 provides that permit applications for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems "shall be

filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990). Permit applications for discharges from medium-sized municipal systems must be filed "no later than five years" after enactment (i.e., no later than February 4, 1992). Ordinarily, NPDES permits for other storm water point source discharges cannot be required until October 1, 1992. However, a permit can be required at any time if a storm water discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards. In addition, an existing permit for a storm water discharge can be reissued at any time if it was originally issued prior to the date of enactment of the WQA (i.e., February 4, 1987).

## III. Today's Proposal

Today's notice proposes to suspend the existing application deadlines of December 31, 1987, for Group I storm water point sources and June 30, 1989, for Group II storm water point sources (40 CFR 122.21(c)(2)). Comments are solicited on the appropriateness of suspending these deadlines.

In the WQA of 1987, Congress recognized that EPA was re-examining the most appropriate means of regulating storm water point sources under the NPDES permit program and specifically required the Agency to take no longer than a maximum of two years from the date of enactment of the new Act to develop permit application requirements for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems. The WQA directs EPA to take no longer than a maximum of four years to develop substantive permit application requirements for discharges from medium-sized municipal separate storm sewer systems. The WQA directs EPA to issue regulations no later than October 1, 1992, designating other storm water discharges to be regulated to protect water quality and establishing a program to regulate such discharges. These regulations are to be based on two studies the Agency is required to submit to Congress by October 1, 1988, and October 1, 1989.

EPA is proposing to suspend the existing Group I storm water permit application deadline for several reasons. First, EPA has not issued the final revised storm water permit application requirements that were proposed in 1985 (50 FR 9362, March 7, 1985, and 50 FR 32548, August 12, 1985). The Agency is



still considering what revised requirements should be promulgated in light of public comment and is examining whether provisions in the WQA affect the final application rule. Prior to issuance of these requirements, Group I storm water point sources should not have to submit permit applications, unless designated on a case-by-case basis, since they would have to use the existing application form. This could require them to gather and submit information that may not ultimately be required by the revised requirements, or they could fail to submit information that may be considered necessary under the new requirements.

In addition, storm water point sources need adequate time to obtain a "representative" storm water sample, ideally one full rain year. Therefore, many discharges could not meet the deadline even if EPA issued the final rule establishing application requirements today. If EPA's final rule allows group storm water applications in order to conserve the resources of the regulated community, as proposed, even more time will be needed to form groups. Although the Agency fully expected to finalize permit application requirements in time for Group I dischargers to conduct these activities and still meet the existing deadline, it was unable to do so. Accordingly, because the WQA makes clear that EPA may take additional time to develop the storm water regulatory program contemplated by the Act, the Agency is proposing to suspend the Group I deadline in order to ensure that the application requirements are appropriate and that the amount of time necessary to obtain representative data will be available after the substantive permit application requirements are finalized.

Finally, EPA is proposing this suspension while the Agency considers whether and how the WQA has affected the scope of the existing definition of "Group I storm water discharge". (See sections 401, 405 and 503 of the WQA.) Application submittal needs to be delayed until the Agency has completed the application rulemaking and made any necessary adjustments to its scope.

EPA is also proposing to suspend the existing Group II application deadline because of the WQA. Pursuant to the Act, NPDES permits cannot be required for storm water discharges until October 1, 1992, unless (1) the discharge is associated with industrial activity, (2) the discharge is from a large or medium-sized municipal separate storm sewer system, (3) the discharge is determined

to contribute to a violation of a water quality standard or is a significant contributor or pollutants to waters of the United States, or (4) a permit for the discharge was issued prior to the date of enactment of the WQA. The discharges for which permits cannot be required until October 1, 1992, generally correspond with the Group II discharges. EPA must issue regulations, based on studies that are to be submitted to Congress in 1988 and 1989, by no later than October 1, 1992, designating the discharges in this group that are to be regulated to protect water quality and establishing a comprehensive program to regulate these discharges. Thus, the Group II deadline of June 30, 1989, is inconsistent with the WQA.

It must be emphasized that neither the recent amendments to the Clean Water Act nor the Agency's intent to change the storm water application deadlines relieves any storm water point source from the requirement to apply for and obtain an NPDES permit if, for example, it is determined that the discharge "contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the U.S.". (See section 405 of the WQA.) This applies to discharges for which permits cannot be required until October 1, 1992, as well as to discharges associated with industrial activity and discharges from large and medium-sized municipal separate storm sewer systems. Moreover, nothing in the new amendments affects the Administrator's ability to restrain pollution under section 504 of the CWA.

It should be noted that if EPA determines, after considering all comments received, to finalize this proposed deadline suspension, it intends to make the final rule effective immediately upon promulgation. Section 553(d) of the Administrative Procedure Act (APA) generally requires publication of a substantive rule not less than 30 days before its effective date. The APA also recognizes exemptions to this requirement, and authorizes an Agency to make a final rule effective immediately upon promulgation if the rule "grants or recognizes an exemption or relieves a restriction" or "for good cause found". This proposed rule would relieve a restriction on storm water discharges or grant an exemption from applying for a permit until a new deadline is issued by suspending an existing regulatory deadline. There also would be good cause to make the proposed rule effective immediately upon promulgation since the Group I deadline is fast approaching. After December 31, 1987, Group I discharges

that had not submitted permit applications would be in violation of the regulation as long as the deadline has not been suspended. Thus, if this proposed suspension is finalized, it would be appropriate to make it effective as quickly as possible to relieve the regulated community of a violation of the regulations, as well as to minimize confusion.

#### IV. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those that impose a cost on the economy of \$100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely deletes application deadlines for certain point source discharges and imposes no new requirements. Thus, it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, I hereby certify, pursuant to 5 U.S.C. 605(b), that this proposed regulation will not have a significant impact on a substantial number of small entities.

#### List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Date: October 8, 1987.

Lee M. Thomas,  
Administrator.

For the reasons set forth in the preamble, Part 122 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:



# **PART 122—EPA-ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

## **Subpart B—Permit Application and Special NPDES Program Requirements**

### **§ 122.21 [Amended]**

2. Section 122.21 is proposed to be amended by removing the first and second sentences of paragraph (c)(2).

[FR Doc. 87-24334 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

## **40 CFR Part 268**

[FRL-3279-7]

## **Hazardous Waste Management System; Land Disposal Restrictions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability and request for comment; extension of public comment period.

**SUMMARY:** On August 12, 1987 (52 FR 29992), the Environmental Protection Agency presented data and information relating to issues associated with lowering the prohibition levels for California list metal-bearing and cyanide-containing wastes. The Agency took this action in light of the requirements of section 3004(d) of the Resource Conservation and Recovery Act (RCRA) which directs EPA to substitute more stringent concentration levels where necessary to protect human health and the environment.

Today's notice extends the public comment period for this Notice of Data Availability and Request for Comment. The Agency is taking this action in response to several requests for an extension of the comment period.

**DATE:** As a result of this action, comments on this notice of data availability and request for comment must be submitted on or before November 12, 1987.

**ADDRESS:** The public must send an original and two copies of their comments to EPA RCRA Docket (S-212), Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-87-LDR6-FFFFF on your comments.

**FOR FURTHER INFORMATION CONTACT:** For general information about this

notice, contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For specific information pertaining to this notice contact Stephen R. Weil or William B. Fortune, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

**SUPPLEMENTARY INFORMATION:** Shortly before the October 13, 1987 deadline, the Agency received four requests for an extension to the comment period for the Notice of Data Availability and Request for Comment related to lowering the prohibition levels for California list metals and cyanides (published in the *Federal Register* on August 12, 1987; 52 FR 29992). EPA received these requests from the American Mining Congress (AMC), the Hazardous Waste Treatment Council (HWTX), Waste Management, Inc., and the Institute of Chemical Waste Management (ICWM).

Three of the requests for extension expressed concern that the standard 60-day comment period did not allow sufficient time to respond because of their concurrent involvement in commenting on other waste management issues. Waste Management, Inc. and ICWM stated that five sets of comments related to RCRA regulations and issues are due during the month of October. The AMC indicated that they would be unable to meet the October 13 comment period deadline for a number of reasons, including the results of their review of the IIT Research Institute (1987) cyanide toxicity study would not be available until after the deadline. The HWTC noted that they had met with EPA to develop a reporting format for submitting data, but that their members required additional time to conduct file searches and prepare comments.

In considering the concerns associated with these requests, and in light of the fact that the comment periods on several other RCRA regulatory actions end during this same time frame, the Agency has decided to extend the comment period. The Agency is extending the comment period on the Notice of Data Availability and Request for Comment for an additional 30 days. Thus, the comment period will now close on November 12, 1987. The Agency believes that this extension compensates for the overlap with other Hazardous Waste Management related comment periods, and provides adequate time to respond to the Notice.

Dated: October 15, 1987.

Marcia E. Williams,

Director, Office of Solid Waste.

[FR Doc. 87-24333 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

## **DEPARTMENT OF THE INTERIOR**

### **Office of the Secretary**

#### **43 CFR Part 17**

### **Nondiscrimination in Federally-Assisted Programs of the Department of the Interior; Nondiscrimination on the Basis of Age**

**AGENCY:** Department of the Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed regulations implement the provisions of the Age Discrimination Act of 1975, and the government-wide regulations published in the *Federal Register* on June 12, 1979 [44 FR 33768, June 12, 1979]. The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

The Age Discrimination Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Job Partnership Training Act. The Act applies to persons of all ages.

These proposed regulations are designed to guide the actions of recipients of financial assistance from the Department of the Interior (DOI). They discuss the responsibilities of DOI recipients and the investigation, conciliation and enforcement procedures DOI will use to ensure compliance with the Act.

**DATE:** Comments must be received on or before November 20, 1987.

**ADDRESS:** Send written comments to Director, Office for Equal Opportunity, U.S. Department of the Interior, Washington, DC 20240. Comments received may also be inspected at Room 1040, Main Interior Building, 18th & C Streets, NW., Washington, DC 20240 between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Charlene D. Hutchinson, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240, or phone (202) 343-3443 (voice) or (202) 343-3434 (TDD).



## SUPPLEMENTARY INFORMATION:

## I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act [Pub. L. 94-135].

The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act contains exceptions which limit the general prohibition against age discrimination. The Act permits the use of age distinctions which are necessary to the normal operation of a program or to the achievement of a statutory objective. The Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the National Parks System) in which Federal assistance flows directly and unconditionally from the Federal government to the individual beneficiary. In accordance with the Act, the Secretary of the Department of Health, Education and Welfare (now the Department of Health and Human Services (HHS)), issued government-wide regulations to guide the development of agency specific regulations by each Federal agency that administers programs of Federal financial assistance [44 FR 33768, June 12, 1979, codified at 45 CFR Part 90]. These, proposed regulations are intended to be consistent with HHS' government-wide regulations. Further, DOI's regulations will be submitted to HHS for review and approval prior to the publication of final regulations in the *Federal Register*.

DOI published proposed regulations in the *Federal Register* on January 3, 1980 [45 FR 976, January 3, 1980]. In view of the period of time that has elapsed since the publication of those proposed regulations, DOI believes it is in the public interest to republish the proposed regulations.

DOI disseminated copies of the initial proposed regulations to its bureaus and offices, other Federal Departments and agencies, State administrators of its federally assisted programs, and interested individuals and organizations. Comments, suggestions, and recommendations were requested by January 31, 1980.

The majority of the comments received were in agreement with the substance and purpose of the regulations. Other comments recommended minor modifications to several sections. Several of the comments received by DOI dealt with the provision that each recipient employing the equivalent of fifteen (15) or more full-time employees perform a self-evaluation of its compliance with the Act. Some comments expressed that specific guidance was required regarding how to accomplish the self-evaluation.

Other comments were concerned with the absence of specific examples of age discrimination practices and the lack of a specified minimum age.

All comments were reviewed and considered; however, because DOI's proposed regulations conform to HHS' government-wide rule, no major changes based on public comments were made.

To ensure consistency with HHS' government-wide regulations, DOI has revised these regulations accordingly. Section 17.302 (*To what programs do these regulations apply?*) has been revised to establish areas to which these regulations do not apply. Section 17.313 has been retitled (*Special benefits for children and the elderly*). Section 17.314 has been retitled (*Age distinctions*). Subsequent sections have been renumbered accordingly.

The self-evaluation requirement contained in these regulations has been revised from the version contained in DOI's initial proposed regulations. The former version would have required all recipients employing fifteen or more employees to complete a written self-evaluation. Section 17.322 states that such recipients *may* be required to undertake a self-evaluation as part of a compliance review or complaint investigation conducted by DOI. The change is based upon HHS' determination that to be consistent with the requirements of the Paperwork Reduction Act of 1980, the paperwork burden associated with the self-evaluation must be limited to recipients where circumstances, in connection with a compliance review or complaint investigation, indicate the need for the self-evaluation.

In addition to publishing specific regulations consistent with the government-wide regulations, the following actions will be taken by DOI to implement the Act:

1. An appendix listing all age distinctions, which appear in Federal statutes and regulations and which affect the agency's programs of financial

assistance, is required and will be included in the final regulations.

2. DOI will report annually to the Congress through HHS on its compliance and enforcement activities.

3. DOI will provide written notices to its recipients concerning their obligations under the Act. Technical assistance will be provided to recipients where necessary and educational materials will be made available explaining the rights and obligations of beneficiaries and recipients.

4. DOI will establish a procedure for processing complaints of alleged age discrimination. The complaints process will entail an initial screening by DOI after consultation with the recipient, if necessary, to determine whether the complaints meet the criteria in §§ 17.310, 17.311, and 17.331 before referral to mediation. DOI will send appropriate notices to complainants and recipients of their rights and obligations under the Act. All complaints covered by the Act will be referred to the Federal Mediation and Conciliation Service (FMCS) for mediation.

5. DOI will evaluate the effectiveness of its regulations 30 months after their effective date. The results of this evaluation will be published in the *Federal Register* for public comment.

This proposed rule is divided into the following major categories: *General; Standards for Determining Age Discrimination; Responsibilities of Recipients; and Investigation, Conciliation, and Enforcement Procedures.*

The "general" section of these regulations explains the purpose of DOI's age discrimination regulations and defines terms used throughout the rule.

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and these regulations.

The general and specific prohibitions against discrimination on the basis of age are covered in § 17.310 of this rule. The exceptions to those prohibitions are set forth in § 17.311.

The rule contains several exceptions which limit prohibitions against age discrimination. Section 17.311 of the regulations permit the use of age distinctions which are based on reasonable factors other than age. Section 17.311(a) of the regulations defines two terms which are essential to an understanding of those exceptions: "Normal operation" and "statutory objective." "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.



"Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected legislative body.

Recipients of DOI funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." The action may be taken even though it has a disproportionate effect on persons of different ages. According to the regulations, however, the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

This rule sets forth the duties of DOI recipients. DOI recipients are responsible for ensuring that their programs and activities are in compliance with the Act and DOI regulations.

Where a primary recipient extends financial assistance to subrecipients, the primary recipient must notify subrecipients of their obligations under the regulations. DOI recipients must also inform beneficiaries of the protections provided by the Act and these regulations.

This proposed rule establishes the procedures DOI will use in its investigation, conciliation, and enforcement activities. These procedures reflect the procedural requirements included in HHS' government-wide regulations.

Section 17.332 introduces mediation into the complaints process for age discrimination. DOI will refer all complaints covered by the Act to the FMCS which was designated by the Secretary of HHS to manage the mediation process.

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date DOI first receives the complaint. No further action will be taken by DOI in connection with a successfully mediated complaint.

DOI will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit DOI to disburse withheld funds to an alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to achieve the goals of the program for which the funds were originally extended.

## II. Regulatory Procedures

### *Impact Analysis Executive Order 12291*

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects. The administrative and procedural regulations implementing the Age Discrimination Act are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of \$100 million or more or otherwise meet the threshold criteria.

### *Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. The impact of these regulations on small entities is minimal because an economic impact such as termination of funding will occur only in those very limited instances where the small entity fails to comply with the statutory and regulatory prohibition concerning age discrimination.

### *Paperwork Reduction Act (Recordkeeping and Reporting Requirements)*

The information collection requirements contained in § 17.323 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084-0027.

### *National Environmental Policy Act*

Because these regulations are administrative, legal, and procedural in nature, they will not have a significant effect on the quality of the human environment and are categorically excluded from the NEPA Process. See 516 DM 2, Appendix 1.

### *Authorship Statement*

The principal author of this proposed rulemaking document is Charlene D. Hutchinson of the Office for Equal Opportunity, U.S. Department of the Interior.

Donald Paul Hodel,

Secretary, Department of the Interior.

Date: September 22, 1987.

## List of Subjects in 43 CFR Part 17

Civil rights, Handicapped.

The Department of the Interior proposes to add Subpart C to 43 CFR Part 17 as set forth below:

### **PART 17—[AMENDED]**

#### **Subpart C—Nondiscrimination on the Basis of Age**

##### **General**

###### **Sec.**

17.300 What is the purpose of the Age Discrimination Act of 1975?

17.301 What is the purpose of DOI's age discrimination regulations?

17.302 To what programs do these regulations apply?

17.303 Definitions.

17.304-17.309 [Reserved]

##### **Standards for Determining Age Discrimination**

17.310 Rules against age discrimination.

17.311 Exceptions to the rules against age discrimination.

17.312 Burden of proof.

17.313 Special benefits for children and the elderly.

17.314 Age distinctions contained in DOI regulations.

17.315 Affirmative action by recipients.

17.316-17.319 [Reserved]

##### **Duties of DOI Recipients**

17.320 General responsibilities.

17.321 Notice to subrecipients and beneficiaries.

17.322 Assurance of compliance and recipient assessment of age distinctions.

17.323 Information requirements.

17.324-17.329 [Reserved]

##### **Investigation, Conciliation, and Enforcement Procedures**

17.330 Compliance reviews.

17.331 Complaints.

17.332 Mediation.

17.333 Investigation.

17.334 Prohibition against intimidation or retaliation.

17.335 Compliance procedure.

17.336 Hearings, decisions, post-termination proceedings.

17.337 [Reserved]

17.338 Remedial action by recipients.

17.339 Alternate funds disbursement procedure.

17.340 Exhaustion of administrative remedies.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, (45 CFR Part 90).

#### **Subpart C—Nondiscrimination on the Basis of Age**

##### **General**

§ 17.300 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit



discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

**§ 17.301 What is the purpose of DOI's age discrimination regulations?**

The purpose of these regulations is to set out DOI's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90 (44 FR 33768, June 12, 1979). The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

**§ 17.302 To what programs do these regulations apply?**

(a) The Act and these regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by DOI.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

- (i) Provides any benefits or assistance to persons based on age; or,
- (ii) Establishes criteria for participation in age-related terms; or,
- (iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Partnership Training Act (29 U.S.C. 1501 *et seq.*).

**§ 17.303 Definitions.**

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration;

(c) "Age" means how old a person is, or the number of years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "DOI" means the United States Department of the Interior.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel;
- (3) Real and personal property or any interest in or use of property, including:
  - (i) Transfers or leases of property for less than fair market value or for reduced consideration; and
  - (ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, transferee, or subrecipient, but excludes the ultimate beneficiary of the assistance.

(k) "Secretary" means the Secretary of the Department of the Interior or his or her designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

**§§ 17.304-17.309 [Reserved]**

**Standards for Determining Age Discrimination**

**§ 17.310 Rules against age discrimination.**

The rules stated in this section are limited by the exceptions contained in § 17.311.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to, discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

**§ 17.311 Exceptions to the rules against age discrimination.**

(a) *Definitions.* For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

(b) *Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 17.310 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:



(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic[s] must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic[s] can be reasonably measured or approximated by the use of age; and

(4) The other characteristic[s] are impractical to measure directly on an individual basis.

(c) *Exceptions to the rules against age discrimination: Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 17.310 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

#### § 17.312 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 17.311 (b) and 17.311(c), is on the recipient of Federal financial assistance.

#### § 17.313 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 17.311.

#### § 17.314 Age distinctions contained in DOI regulations.

Any age distinctions contained in a rule or regulation issued by DOI shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 17.311.

#### § 17.315 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

#### §§ 17.316-17.319 [Reserved]

#### Duties of DOI Recipients

##### § 17.320 General responsibilities.

Each DOI recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford DOI access to its records to the extent DOI finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

##### § 17.321 Notice to subrecipients and beneficiaries.

(a) Where a recipient extends Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them of the protections against discrimination provided by the Act and these regulations.

##### § 17.322 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from DOI shall sign a written assurance as specified by DOI that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 17.330 or complaint investigation under § 17.331, DOI may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOI to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the DOI regulations, the recipient shall take corrective action.

##### § 17.323 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which DOI determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to DOI, upon request, information and reports which DOI

determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent DOI determines necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) [Reserved]

#### §§ 17.324-17.329 [Reserved]

#### Investigation, Conciliation, and Enforcement Procedures

##### § 17.330 Compliance reviews.

(a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in § 17.335.

##### § 17.331 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant had knowledge of the alleged act of discrimination. For good cause shown, however, DOI may extend this time limit.

(b) DOI will consider the date a complaint is filed to be the date upon which the complaint sufficiently meets the criteria for acceptance as described in paragraphs (a) and (c)(1) of this section.

(c) DOI will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to



meet the requirements of a sufficient complaint, as described in paragraphs (a) and (c)(1) of this section.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact DOI for information and assistance regarding the complaint resolution process.

(d) DOI will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

#### § 17.332 Mediation.

(a) *Referral of complaints for mediation.* DOI will promptly refer to the FMCS all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, FMCS shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The FMCS shall send the agreement to DOI. DOI, however, retains the right to monitor the recipient's compliance with the agreement.

(d) The FMCS shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) DOI will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.

(f) The FMCS shall return unresolved complaints to DOI.

#### § 17.333 Investigation.

(a) *Informal Investigation.* (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State program agency.

(3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.

(4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If DOI cannot resolve the complaint through informal means, it will develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in § 17.335.

#### § 17.334 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

#### § 17.335 Compliance procedure.

(a) DOI may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Cases settled in mediation or prior to a hearing will not involve termination of a recipient's Federal financial assistance from DOI.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under § 17.335(a)(1) to the particular program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) of this section, until:

(1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under § 17.335(a)(1) is initiated.

(1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 17.335(a)(1).

(2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 17.335(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.



**§ 17.336 Hearings, decisions, post-termination proceedings.**

Certain DOI procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOI's enforcement of these regulations. The procedural provisions of DOI's Title VI regulations can be found at 43 CFR 17.8 through 17.10 and 43 CFR Part 4, Subpart I.

**§ 17.337 [Reserved]****§ 17.338 Remedial action by recipients.**

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

**§ 17.339 Alternate funds disbursement procedure.**

(a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.

(b) The Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

**§ 17.340 Exhaustion of administrative remedies.**

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or

(2) DOI issues any finding in favor of the recipient.

(b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the

complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 87-24341 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-RE-M

**FEDERAL EMERGENCY MANAGEMENT AGENCY****44 CFR Part 205****Individual and Family Grant Program**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** FEMA is requesting public comments and proposals regarding administration of the Individual and Family Grant (IFG) program (Section 408 of Pub. L. 93-288, the Disaster Relief Act of 1974). Current regulations require the State to adopt, and the FEMA Regional Director to approve, an administrative plan. FEMA has observed that some States have prepared very good plans, others are lacking in detail or far too detailed. But all in all, the requirement for plans is time intensive and burdensome for States, and sometimes fails to promote timely, effective management of the program. Therefore, FEMA is seeking ways to streamline planning and to promote uniformity and consistency in IFG implementations, while still accounting for the administrative differences among the States. The intended effect of this advance notice is to obtain comments and proposals regarding State administration, which will be considered by FEMA and later a rule will be proposed to address State planning.

**DATE:** All comments received by December 21, 1987, will be considered in the preparation of a proposed rule.

**ADDRESS:** Please send comments to: The Rules Docket Clerk, Office of General

Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:**

Agnes C. Mravcak, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Room 710, Washington, DC 20472, Phone: (202) 646-3660.

**SUPPLEMENTARY INFORMATION:** Under section 408 of the Act, FEMA provides grants to States for the purpose of the States providing grants to individuals and families who cannot meet serious disaster related expenses or needs through other disaster assistance programs or other means. This grant to the State is made on the condition that the State provide 25 percent of the cost of the grants, and that the Governor administer the program. State administration now occurs through implementation of an administrative plan.

The requirement for a State plan comes from Federal regulations at 44 CFR 205.54. It was originally adopted as a way to promote uniformity and consistency in the administration of the program nationwide. However, plan writing has blossomed into a lengthy process for States, that sometimes does not result in timely, effective program management.

FEMA is considering whether to eliminate the requirement for State plans while accounting for differences in management and administration of the IFG program. In that regard, FEMA would like to obtain proposals and comments on the following:

1. Should State administrative plans in their present form be abolished?

2. Should the IFG regulations be amended to include standard State operating procedures in lieu of formal plans? If so, what are the most basic elements that should be included in the regulation?

3. Should there be a requirement for:

- a. A standard plan with allowances for State differences?

- b. A shortened version of the current plan?

- c. A letter of agreement upon each major disaster declaration, in lieu of a plan?

- d. Specific paragraphs in the FEMA/State Agreement regarding administration of the program?

4. What are the most basic requirements that should be included in a standard plan or agreement?



5. What other methods of establishing uniform administration of the program should be considered?

When comments are received, FEMA will also consider convening a workgroup to review the suggestions and to adopt a formal proposal on this topic for publication as a proposed rule in the *Federal Register*. FEMA would appreciate participation by a number of States in this planning process. Indications of State interest in participating would be welcome in the comments on this notice.

#### List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing, Community development.

Dated: October 2, 1987.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87-24302 Filed 10-20-87; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 87-390; FCC 87-301]

### 47 CFR Parts 2 and 22

#### Liberalization of Technology and Auxiliary Service Offerings; Domestic Public Cellular Radio Telecommunications Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action is proposing to give cellular radio licensees the option of offering advanced cellular technology and auxiliary services by relaxing restrictions on channel assignments, emission characteristics and compatibility standards. Permitting advanced cellular technology should lead to more efficient use of the spectrum so that a greater number of subscribers can be served. Permitting cellular licensees the flexibility to offer auxiliary services should result in improved and more diversified services for subscribers. The proposal would give cellular licensees the freedom to tailor service to the needs in their particular service areas.

**DATES:** Comments are due December 15, 1987. Reply comments are due January 15, 1988.

**ADDRESS:** Federal Communications Commission; Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Joseph P. Husnay or Rodney T. Small.

Office of Engineering and Technology. (202) 653-8106 or (202) 653-8116.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making* in General Docket 87-390, FCC 87-301, adopted September 17, 1987 and released October 15, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

#### Summary of Notice of Proposed Rule Making

1. In this *Notice* the Commission is considering, on its own motion, whether to amend Parts 2 and 22 of the Rules to enable cellular radio service operators to introduce advanced cellular technologies and provide auxiliary services in the 824-849/869-894 MHz cellular frequency bands. Several manufacturers are currently engaged in the design of future cellular telephone systems as well as methods by which these designs can be implemented within the current systems. Many new technologies that could be employed by cellular systems are restricted by the current FCC rules. Hence, by relaxing certain technical requirements, such as those pertaining to channel assignments, emission characteristics, and compatibility standards, the rules would be better suited to give cellular licensees greater freedom to employ new technology and to offer improved or more diverse types of services.

2. In considering whether or not to relax certain technical standards the Commission is concerned with the impact this proposal might have on the adequacy of conventional cellular service and on the compatibility requirements used for insuring service to roamers. In this regard, the item seeks comments on whether it is in the public interest to set guidelines or requirements concerning cellular system quality and compatibility. The Commission is also concerned with controlling interference to and from neighboring cellular systems. Hence, this item purposes to maintain the current power and field intensity limitations at the boundaries of cellular service areas. The item also proposes to require that the introduction of new technology and auxiliary services be frequency coordinated in the same manner as current systems. By

maintaining some technical standards while relaxing others, we believe this proposal can be implemented without disruption to existing or planned cellular systems. This action is therefore intended to promote the public interest by encouraging the development of more spectrum-efficient cellular technologies and by permitting more efficient and intensive use of the frequencies that have been allocated for cellular service.

3. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, public comment is requested on the initial regulatory analysis set out in the Commission's complete decision.

4. The collection of information requirement contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Communications Commission.

5. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

#### Ordering Clause

6. This action is taken pursuant to 47 U.S.C. sections 154(i), 303(c), 393(f), 303(g), 303(r) and 332.

#### List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 22

Radio.

#### Proposed Rule Changes

Parts 2 and 22 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

#### PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

**Authority:** Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by listing footnote NG151 in column 5 for the 824-849 MHz and 869-894 MHz bands and by adding the text of footnote



NG151 to the list of footnotes at the end of the table. As revised, the entries for the 824-849, and 869-894 Hz bands, and new footnote NG151 read as follows:

**§ 2.106 Table of frequency allocations.**

United States Table				
Non-Government Allocation (MHz) (5)				
824-849, Land Mobile, NG30, NG43, NG63, NG151				
869-849, Land Mobile, NG30, NG63, NG151, US116, US268				
Non-Government (NG) Footnotes				
NG151 In the frequency bands 824-849 MHz and 869-894 MHz, cellular land mobile licensees are permitted to offer additional services subject to the provisions of Part 22 of the FCC Rules and Regulations.				

**PART 22—PUBLIC MOBILE SERVICE**

1. The authority citation in Part 22 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1083, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Part 22 is amended by adding § 22.930 to read as follows:

**§ 22.930 Special provisions for alternative cellular technologies and auxiliary services.**

Provided that interference to other cellular systems is not created, cellular licensees may employ alternative cellular technologies and auxiliary services. These special provisions will be referred to as the cellular service option. The cellular service option may be exercised subject to the following requirements:

(a) Cellular licensees may offer advanced cellular technology or auxiliary communication services. The cellular licensee will be responsible for all operations in its authorized frequency block and service area.

(b) Cellular licensees are required to inform the Commission of the new technology or new services to be provided under the cellular service option at least 30 days prior to the implementation of the services. The information required to be filed with the Commission includes a description and classification of the services intended to be offered, and a listing of any new or modified transmitting facilities.

(c) Operations under the cellular service option are subject to the technical requirements of §§ 22.903, 22.904, and 22.905. The emission requirements of § 22.907 will be applied, but only to the extent of those emissions that fall outside the specific cellular frequency bands licensed to the operator, i.e., band A or band B. Mobile transmitters are subject to type acceptance in accordance with Part 2 of the Rules.

(d) Operations under the cellular service option are not subject to the channeling requirements of § 22.902, and the types of emissions and modulation requirements of § 22.906. The requirements of § 22.911 pertaining to permissible communications shall apply under the cellular service option, except for the channel pairing requirement.

(e) The cellular licensee may implement alternative technologies and auxiliary services on the condition that some conventional service is maintained that conforms to the standards in §§ 22.902 through 22.907, in order to provide service to roamers.

(f) For mobile facilities (other than cellular radio), the information required by paragraph (b) of this section, must include the number of units to be placed in service, manufacturer's name, FCC identification number, and specific frequencies of operation. Licensees shall submit emission bandwidth and frequency tolerance data to the Commission demonstrating compliance with the rules.

(g) For fixed transmitting facilities, the information required by paragraph (b) must include sufficient technical data and calculations to verify compliance with the aggregate field strength limit. Calculations are required at ten equally spaced intervals around the service contour. Other data required for fixed transmitters is the manufacturer's name, model number, rated output power, operating frequency, frequency tolerance, modulation type, emission profile, and antenna location, elevation, orientation, and pattern.

(h) Operations under the cellular service option are subject to frequency coordination in accordance with § 22.902(d).

Federal Communications Commission.

William J. Tricarico,  
Secretary.

[FR Doc. 87-24367 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 65**

[CC Docket No. 87-463; FCC 87-315]

**Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers**

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes modifications to the Commission's procedures and methodologies for prescribing interstate rates of return prior to the upcoming proceeding to reexamine the currently authorized return. The Notice proposes changes to Part 65 of its Rules as a result of experience gained in the prior proceeding, changed circumstances and newly available data.

**DATES:** Comments are due November 23, 1987, and replies are due December 11, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Steve Goodman, Telephone (202) 632-0745.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in Common Carrier Docket No. 87-463, FCC 87-315, Adopted October 8, 1987 and Released October 13, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 203), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Notice of Proposed Rulemaking**

1. In this Notice of Proposed Rulemaking (NPRM), this Commission seeks to revise the procedures and methodologies for represcribing interstate rates of return. Although the first proceeding was successful, some areas for further study presented themselves. In addition, circumstances have evolved since the initial proceeding, and this NPRM seeks comments on the effects of any such changes on the Part 65 Rules. In light of the upcoming represcription that will begin in early 1988, the NPRM seeks to



complete any necessary modifications prior to the initiation of the next proceeding.

2. The Commission's Rules currently group all of the local exchange carriers (LECs) into a single group and prescribe a unitary, overall return. The basis for that categorization—similar interstate access risk—may have changed. The NPRM explores the possibility of multiple LEC groupings and subgroupings. In addition, the NPRM seeks comment on use of a unitary grouping only for the return on equity component.

3. The initial proceeding revealed flaws with the comparable firm methodology. The NPRM proposes to replace the current "screening" techniques with cluster analysis as a means of determining firms with risk comparable to interstate activities. The NPRM also suggests use of the refined comparable firms approach as a method of estimating only return on equity components.

4. The NPRM also seeks comment on two rate of return estimation techniques that were previously unavailable because of the small amount of post-divestiture data at the time of the initial prescription. The NPRM seeks comment on the capital asset pricing model and an approach of using accounting data to estimate costs of capital for particular business segments.

5. Finally, the NPRM seeks comment on a number of miscellaneous issues. Included in this group of additional issues to be addressed by commenting parties are: Details of the discounted cash flow model; timing for supplemental data submissions; reconsideration procedures; use of a three year earnings review period; and modification of the waiver standards for individualized treatment.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the rule change proposed in this proceeding is exempt from application of the statute because it will not have a significant impact on a substantial number of small entities. A small-business concern is defined in section 3 of the Small Business Act as a concern which is not dominant in its field of operations. 15 U.S.C. 632; 13 CFR 121.3(c). The rules proposed in this proceeding would apply to dominant carriers only and hence would not have a significant impact on small entities.

7. For purposes of this non-restricted notice and comment proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts this Notice until the time a Public Notice is issued stating that this matter has been placed

on the Sunshine Agenda, or until a final Order disposing of the matter is adopted by the Commission, which ever is earlier.

8. In general, an *ex parte* presentation is any written communication (other than formal written comments or reply comments) directed to the merits or outcome of a proceeding made to any member, officer, or employee of the Commission who is or may reasonably be expected to be involved in the decisional process in the proceeding and which, if written, is not served on the parties to the proceeding, and, if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Any person who makes or submits a written *ex parte* presentation shall serve on the same day it is submitted a copy of same on the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation presenting data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in the proceeding shall provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the date and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and also state by docket number the proceeding to which it related. See generally 52 FR 21,051 (1987) (to be codified at 47 CFR 1.1206).

9. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a written containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order.

10. This rulemaking proceeding is instituted pursuant to our authority under sections 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 201-205 and 403. Comments on the proposed rulemaking shall be due on November 23, 1987 with reply comments due on December 11, 1987.

11. In accordance with the provisions of § 1.419(b) of the Commission's Rules, 47 CFR 1.419(b), an original and five copies of all comments, replies, pleadings, briefs and other documents filed in the proceeding shall be furnished to the Commission. Members of the public who wish to express their views

by participating informally may do so by submitting one or more copies of their comments without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filing will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239 at its headquarters at 1919 M Street NW., Washington, DC).

#### List of Subjects in 47 CFR Part 65

Interstate rate of return, Prescription procedures and methodologies.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24366 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 87-437; RM-5842]

#### Radio Broadcasting Services; Selma and Union Springs, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** This document requests comments on a petition by Alexander Broadcasting Company, licensee of Station WALX(FM) (Channel 265A), Selma, AL, requesting the substitution of Channel 265C2 for Channel 265A and modification of its license to specify operation on the higher class channel, in order to provide that community with its second wide coverage area FM service. Additionally, petitioner requests the substitution of Channel 231A for Channel 265A at Union Springs, Alabama, and modification of the license of Station WSFU-FM, licensed to Mar, Inc., to accommodate its proposal.

**DATES:** Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Philip M. Baker, Esq., 4701 Willard Avenue, Wash., DC 20815.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-437, adopted September 25, 1987, and released October 15, 1987. The full text



of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24372 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 87-439; RM-5889]

#### Radio Broadcasting Services; Lake City, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Holder Media, Inc., licensee of Station WQPD(FM), Lake City, Florida, which seeks to substitute Channel 232C2 for Channel 232A at Lake City, and to modify its license to specify the class C2 channel.

**DATES:** Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard Hildreth, P.C., Fletcher, Heald and Hildreth, 1225 Connecticut Avenue NW., Suite 400,

Washington, DC 20036 (attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-439, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24374 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 87-435; RM-5840]

#### Radio Broadcasting Services; Lehigh Acres, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Dwyer Broadcasting, Inc., licensee of Station WOOJ-FM, Lehigh Acres, Florida, which seeks to substitute Channel 296C2 for Channel 296A at Lehigh Acres, and to modify its license to specify the Class C2 channel.

**DATES:** Comments must be filed on or before December 7, 1987, and reply

comments on or before December 22, 1987.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays, and Handler, 1575 Eye Street, NW., Washington, DC 20005 (attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-435, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24368 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 87-438; RM-5894]

#### Radio Broadcasting Services; West Palm Beach, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.



**SUMMARY:** This document requests comments on a petition for rule making filed by J.J. Taylor Companies, Inc. proposing to upgrade its facilities for Station WEAT-FM, West Palm Beach, Florida by substituting Class C Channel 282 for Channel 282C1 and modifying its license accordingly. Petitioner proposes to relocate its transmitter to a site 26.5 kilometers (16.5 miles) southwest of the city.

**DATES:** Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John J. Duffy, Pierson, Ball and Dowd, 1200 18th Street NW., Washington, DC 20036 (attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-438, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24373 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 87-436; RM-6024]

#### Radio Broadcasting Services; Eagle Nest and Angel Fire, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Francis O'Connell d/b/a Moreno Valley Broadcasting, Inc. requesting the allocation of Channel 256C2 to Eagle Nest and Angel Fire, NM, on a hyphenated basis, as the communities first local FM service. Channel 256C2 can be allocated to Eagle Nest or Angel Fire in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Petitioner is requested to furnish additional information to show that Eagle Nest and/or Angel Fire are communities for allotment purposes and to show that they are so intertwined to warrant a hyphenated allocation.

**DATES:** Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Francis O'Connell, Moreno Valley Broadcasting, Inc., P.O. Box 181, Eagle Nest, New Mexico 87718 (petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-436, adopted September 25, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800,

2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24371 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 87-433; RM-5994]

#### Radio Broadcasting Services; Brookville and Punxsutawney, PA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Strattan Broadcasting requesting the substitution of Channel 288B1 for its Channel 240A at Brookville, PA, and the modification of its license for Station WMKX to specify the higher powered channel. In addition, petitioner requests the substitution of Channel 281A for Channel 288A at Punxsutawney, PA, and the modification of Renda Radio, Inc.'s license for Station WPXZ to specify Channel 281A. Channel 288B1 can be allocated to Brookville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. It cannot, however, be used at Station WMKX's present transmitter location or the site specified in its pending application due to a short-spacing to Station WCHX at Lewistown, PA. Channel 281A can be allocated to Punxsutawney, PA in compliance with the Commission's minimum distance separation requirements and can be used at Station WPXZ's present transmitter site. An *Order to Show Cause* is directed to Renda Radio, Inc.



concerning the modification of its license for Station WPXZ. Canadian concurrence is required since both Brookville and Punxsutawney are located within 320 kilometers of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., #203, Washington, DC 20036 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-433, adopted September 17, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24370 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 87-434, RM-6021]

#### Radio Broadcasting Services; Surfside Beach, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Jones, Eastern of the Grand Strand, Inc., licensee of Station WYAK-FM, Surfside Beach, South Carolina, proposing the substitution of Channel 276C2 for Channel 276A at Surfside Beach and the modification of its license to specify the higher powered channel. Channel 276C2 can be allocated to Surfside Beach in compliance with the Commission's minimum distance separation requirements and used at Station WYAK-FM's present transmitter location. In view of the fact that this proposal represents a co-channel upgrade, we shall not accept competing expressions of interest in use of the channel at Surfside Beach nor require the petitioner to demonstrate the availability of an additional equivalent channel. See section 1.420(g) of the Commission's Rules.

**DATES:** Comments must be filed on or before December 7, 1987, and reply comments on or before December 22, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, John Joseph McVeigh, Fisher, Wayland, Cooper & Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-434, adopted September 11, 1987, and released October 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.  
Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24369 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Proposal To Determine *Asclepias meadii* (Mead's Milkweed) To Be Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to list *Asclepias meadii* (Mead's milkweed), a prairie perennial, as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). Approximately 61 populations are currently known; 40 in Kansas, 3 in Illinois, 1 in Iowa, and 17 in Missouri. The plant is believed extirpated from Indiana and Wisconsin. It is threatened by destruction and modification of the "tall grass" prairie due to agricultural expansion, urban growth, and agricultural practices detrimental to the plant's reproductive cycle. This proposal, if made final, will implement Federal protection provided by the Act for *Asclepias meadii*. Critical habitat is not being proposed. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by December 21, 1987. Public hearing request must be received by December 7, 1987.



**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Endangered Species Division, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** James M. Engel, Endangered Species Coordinator (see **ADDRESSES** section) at 612/725-3276 or FTS 725-3276.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Asclepias meadii* (Mead's milkweed) was first collected by Dr. Samuel Barnum Mead in Hancock County, Illinois, in 1843, and subsequently described by John Torrey in an 1856 addendum to the second edition of *Gray's Manual of Botany* (Betz 1967).

*Asclepias meadii* is a perennial that usually occurs in virgin prairie as a solitary plant or as a few closely associated individuals (Kurz and Bowles 1981). Ronald McGregor (University of Kansas, pers. comm. 1985) has found *Asclepias meadii* only in tallgrass prairies. Morgan (1980) reports that Missouri populations are found in unplowed bluestem prairie in the unglaciated region of the State where the soils are deep silt loam. Betz and Hohn (1978) report that this species occurs on virgin mesic silt loam prairies and occasionally on limestone glade prairies in Missouri and southern Illinois. Betz and Hohn (1978), and Kurz and Bowles (1981) report that very few individual plants are found at any given population, with most populations containing fewer than a dozen plants. However, R. Brooks (Kansas Biological Survey, pers. comm. 1986) reports that populations in Kansas seem to average about 20 plants each. Associated species found with *Asclepias meadii* are *Sorghastrum nutans*, *Andropogon gerardii*, *Petalostemum candidum*, *Gentiana puberula*, *Ruellia humilis*, and *Silphium laciniatum* (Betz and Hohn 1978). *Platanthera praeclara* (western prairie fringed orchid), recently segregated as an allopatric species from *Platanthera leucophaea* (eastern prairie fringed orchid), and considered as a candidate for Federal listing, is also associated with *Asclepias meadii* at several locations in Kansas (Sheviak and Bowles, pers. comm. 1986).

*Asclepias meadii* usually commences its seasonal growth in mid to late April. It has a solitary, slender, unbranched stalk, 8-16 inches (20-40 centimeters) high, without hairs, but with a whitish,

waxy covering. The leaves are opposite, broadly ovate, 2-3 inches (5-7.5 centimeters) long,  $\frac{3}{8}$ -2 inches (1-5 centimeters) broad, without hairs and also with a whitish, waxy covering. A solitary umbel at the top of a long stalk has 6-15 greenish ivory/cream colored flowers that open in late May and early June. Young green fruit pods appear by late June and reach their maximum length of 1.5-3 inches (4-8 centimeters) by late August or early September. As these pods mature they darken and the hairy seeds borne within are mature by mid October (Morgan 1980, Kurz and Bowles 1981).

Historically, *Asclepias meadii* ranged throughout much of the "tall grass" prairie. It is now restricted to 61 known sites in 21 counties within Illinois, Iowa, Kansas, and Missouri. It is thought to be extirpated in Indiana and Wisconsin (Bacone *et al.* 1981, Alverson 1981). In Illinois the plant's former range of 7 counties has been reduced to 2: Ford and Saline Counties, where 2 of the 3 populations are found on public land administered by the U.S. Forest Service. The other population occurs within a railroad right-of-way (Kurz and Bowles 1981). The plants' range in Missouri, once covering 11 counties as reported by Betz and Hohn (1978), has now been reduced to 7 counties: Barton, Benton, Dade, Pettis, Polk, St. Clair, and Vernon (Morgan, pers. comm. 1986). Nine of the 17 extant Missouri populations are in public ownership. Watson (1983) reported that *Asclepias meadii* was historically known from 5 counties in Iowa, but that all had been extirpated. A recent report by Leoschke (pers. comm. 1986) reveals 1 population with one plant, on public property, in Warren County, Iowa. McGregor (pers. comm. 1985) reported 11 populations of *Asclepias meadii* in 9 Kansas counties (Anderson, Bourbon, Coffey, Douglas, Jefferson, Johnson, Franklin, Leavenworth, and Miami). Brooks (pers. comm. 1986) reports that field survey work conducted in these 9 counties, as well as Allen and Linn counties during the summer of 1986, resulted in the discovery of 29 additional populations. Only the population in Jefferson county is protected.

Federal Government actions on Mead's milkweed began with Section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance

of the Smithsonian Institution report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication. *Asclepias meadii* (Mead's milkweed) was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the *Federal Register* on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 amendments to the Act. On December 15, 1980, the Service published a revised notice of review for native plants in the *Federal Register*. *Asclepias meadii* was included in that notice as a category 1 species. Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted. On September 27, 1985 (50 FR 39525), the Service again published a revised notice for native plants in the *Federal Register*; *Asclepias meadii* was included in that notice as a category 2 species. Category 2 species are those for which the Service believes additional data must be obtained before a proposal to list is warranted. Status information received since the September 27, 1985 (50 FR 39525), notice indicates that proposing to list *Asclepias meadii* as a threatened species is warranted.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Asclepias meadii* Torr. (Mead's milkweed) are as follows:



A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Asclepias meadii* is threatened by the elimination of its "tall grass" prairie habitat due to urban development, agricultural expansion, and detrimental agricultural practices. McGregor (pers. comm. 1985) reports that over the last 40 years he has observed the slow elimination of prairie hay meadows through plowing, conversion to grazing, and development. Betz and Hohn (1978) also note that prairie hay meadows are being plowed and put into grain crops; even those hay meadows remaining are mowed once or twice each year before *Asclepias meadii* plants are able to set seeds. McGregor (pers. comm. 1985) also reports that yearly mowing of these tallgrass prairies where *Asclepias meadii* is found severely restricts the plant's reproduction and any chance for increased distribution. Kurz and Bowles (1981) report that *Asclepias meadii* populations occurring within railroad rights-of-way in Ford County, Illinois, are threatened by erosion, lack of fire, and use of herbicides and plowing, while the populations in Salin County are threatened by encroachment of woody vegetation and trampling by hikers. McGregor (pers. comm. 1985) reports that one of the best Kansas populations, the one in which Brooks counted 800-1,000 plants in 1985, is in an area certain to be developed for housing in the next few years.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites.

C. *Disease or predation.* McGregor (pers. comm. 1985) reports that it is not unusual to find aerial portions of *Asclepias meadii* plants suddenly wilting and dying because of infestation of a beetle larva (Curculionidae) in the stalk. McGregor (pers. comm. 1985) also notes that other insects puncture the peduncle, killing the inflorescence just at the blooming period. Betz and Hohn (1978) report that the larvae of *Tetraplois femoratus* are destructive to the small root system of *Asclepias meadii*, but not to larger milkweeds such as *Asclepias syriaca* and *Asclepias sullivantii*, which seem to tolerate more infestation than *Asclepias meadii*.

D. *The inadequacy of existing regulatory mechanisms.* *Asclepias meadii* is officially listed as endangered by the States of Illinois, Iowa, and Missouri. Kansas does not have specific legislation or rules to protect endangered or threatened plants. Illinois

law protects those endangered and threatened plants found on State property and prohibits taking State endangered plants without written permission of the landowner; it also prohibits sale of State endangered plants. State permits are required for taking or possessing Federal endangered plants. Iowa regulations prohibit removal, possession, and sale of any plant species on the Federal or State lists. The Missouri regulations prohibit exportation, transportation, or sale of plants on the State or Federal lists; collecting, digging, or picking any rare or endangered plant without permission of the property owner is prohibited. Although *Asclepias meadii* is offered various forms of protection under these State laws, monitoring and enforcement are difficult due to limited personnel. While approximately 28% of the known populations of *Asclepias meadii* are located on public lands and receive some form of protection, the majority of the known populations are, as yet, unprotected. The Endangered Species Act offers possibilities for additional protection of this taxon through section 6 by cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements. The Endangered Species Act would afford additional protection to *Asclepias meadii*.

E. *Other natural or manmade factors affecting its continued existence.* Betz and Hohn (1978) report that the low number of individual plants at any one site do not attract potential pollinators, and this factor is possibly the cause for low reproductive success. Betz and Hohn (1978) also report that studies at the Morton Arboretum indicate that five to eight years are necessary for plants to mature from seed. McGregor reports that Kansas populations of *Asclepias meadii* tend to have larger numbers of plants in some years and fewer in others. Betz and Hohn (1978) also observe that individual plants produce flowers for two or three years and then rest, and in some cases completely disappear for a few years. Research is needed to better understand this fluctuation phenomenon in order to maintain and promote the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Asclepias meadii* as threatened. Sixty-one populations of this species are known to exist. Over 70% of these populations are on privately owned property and receive

no protection or management designed to enhance the species' continued existence. Threatened status is appropriate because without protection and further research this species will continue to be vulnerable. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Asclepias meadii* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat map.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition, if necessary, and cooperation with the States. It also requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed



critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service has jurisdiction over the *Asclepias meadii* population in Saline County, Illinois. Federal activities that could affect the species and its habitat in the future could include forest management practices and recreational and interpretative development. It has been the experience of the Service that the majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Asclepias meadii* is not known to exist. It is anticipated that few trade permits would ever be sought or issued since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1935).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered and threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal, are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Asclepias meadii*;

(2) The location of any additional populations of *Asclepias meadii* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Asclepias meadii*.

Final promulgation of a regulation on *Asclepias meadii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the Federal Register on October 25, 1983 (48 FR 49244).

#### References Cited

- Alverson, W.S. 1981. Status report on *Asclepias meadii*. Wisconsin Department of Natural Resources. Unpubl. ms. 4 pp.
- Bacone, J.A., Crovello, T.J., and Hauser, L.A. 1981. Status report on *Asclepias meadii*. Indiana Department of Conservation. Unpubl. ms. 10 pp.
- Betz, R.F. 1967. The ecology of *Asclepias*, especially *Asclepias meadii* Torrey, and a study of the factors contributing to its possible extinction as a wild plant. A Research proposal to the National Science Foundation, Washington, DC.
- Betz, R.F. and Hohn, J.E. 1978. Status report for *Asclepias meadii* Torr. prepared for the U.S. Fish and Wildlife Service. 9 pp.
- Kurz, D.R. and Bowles, M.L. 1981. Report on the status of Illinois vascular plants potentially endangered or threatened in the United States. Natural Land Institute Rockford, Illinois. Unpubl. ms. 10 pp.
- Morgan, S.W. 1980. Status report on *Asclepias meadii*. Missouri Department of Conservation. Unpubl. ms. 15 pp.
- Watson, W.C. 1983. Status report of *Asclepias meadii*. Iowa Conservation Commission. Unpubl. ms. 11 pp.

#### Author

The primary author of this rule is William F. Harrison (see ADDRESSES section) (612/725-3276 or FTS 725-3276).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asclepiadaceae, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asclepiadaceae—Milkweed family:	*	*	*	*		
<i>Asclepias meadii</i>	Mead's milkweed	U.S.A. (IL, IN, IA, KS, MO, WI)	T		NA	NA



Dated: September 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and  
Wildlife and Parks.

[FR Doc. 87-24296 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 650

#### New England Fishery Management Council; Atlantic Sea Scallop Fishery Public Hearing

**AGENCY:** National Marine Fisheries  
Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of a public hearing.

**SUMMARY:** The National Marine Fisheries Service (NMFS) and the New England Fishery Management Council (Council) will hold a special public hearing to allow for input on the possible need for a temporary adjustment in the sea scallop management standard. Information on the status of the resource will be presented by NMFS as the basis for public discussion. The Council made a preliminary recommendation on the matter to the Regional Director at its regularly scheduled meeting on October 7, 1987. The Council's recommendation and the information received at the public hearing will be considered by the Regional Director in deciding whether to implement a temporary adjustment in the management standard.

**DATE:** The public hearing will be held on Thursday, October 29, 1987, between 1:00 and 4:00 p.m.

**ADDRESS:** The hearing will take place at the East Boston Ramada Inn, Route 1A, East Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** David Crestin, Chief, Management Division, Northeast Region, 14 Elm Street, Gloucester, MA 01930, 617-281-3600, or Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906, 617-231-0422.

**SUPPLEMENTARY INFORMATION:** A notice of availability for Amendment 2 to the Atlantic Sea Scallop Fishery Management Plan (FMP) was published in the Federal Register on September 21, 1987 (52 FR 35464). Subsequently, the amendment was returned because amendatory language to the habitat section of the FMP was not included. The Council is now concerned that the amendment, which establishes a seasonal adjustment mechanism in the management standard, may not be implemented prior to January. Therefore, the Council would like to review the latest annual report on the status of the resources as required by the FMP to determine whether a temporary adjustment of standards, if justified by current resource conditions, might be used to achieve the same result as Amendment 2; that is, a seasonal adjustment of the meat count in a more timely fashion. Normally, the public hearing would have been held on the same day as the Council meeting, which was held October 7, 1987. However, the unusual circumstances surrounding the review of Amendment 2 and the onset of the spawning season necessitates the scheduling of a public hearing as soon after the Council meeting as possible in order to provide the public adequate notice of the hearing.

Dated: October 15, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,  
National Maritime Fisheries Service.

[FR Doc. 87-24319 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-22-M

#### 50 CFR Parts 661 and 663

#### Pacific Fishery Management Council; Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California, and Pacific Coast Groundfish Fishery; Public Hearing

**AGENCY:** National Marine Fisheries  
Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of a public hearing and  
request for comments.

**SUMMARY:** The Pacific Fishery Management Council (Council) announces the availability for public review of (1) the "Draft Third Amendment to the Pacific Coast

Groundfish Fishery Management Plan Incorporating the Environmental Assessment, Regulatory Impact Review/Regulatory Flexibility Analysis, and Requirements of Other Applicable Law" and (2) the "Draft Eighth Amendment to the Fishery Management Plan For Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California Commencing in 1978." The Council will hold a public hearing on these amendment issues and is requesting comments from the public.

**DATES:** The hearing will begin at 7:00 p.m., on November 17, 1987. Written comments will be received until November 12, 1987.

**ADDRESSES:** The hearing will be held at the Red Lion Motor Inn—Columbia River, 1401 North Hayden Island Drive, Portland, OR. Copies of the draft groundfish and salmon amendments can be obtained by writing or telephoning Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Center, Suite 420, 200 SW., First Avenue, Portland, OR 97201. Written comments may be sent to the Council office.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, 503-221-6352.

**SUPPLEMENTARY INFORMATION:** The Council proposes to incorporate new sections in its present groundfish and salmon fishery management plans which detail the habitat modification on the resources and the fisheries. The proposed sections also clarify the Council's habitat policy and should provide a useful source of information for those concerned with the importance of habitat to fish production.

The second issue contained in the proposed amendments clarifies the Council's capability and procedures for considering temporary adjustments to fishery access due to unsafe weather or oceanic conditions. While this type of action is not precluded by the current fishery management plans, the Council is reviewing the issue in light of a recent amendment to the Magnuson Fishery Conservation and Management Act.

Dated: October 15, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 87-24320 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-22-M



# Notices

Federal Register

Vol. 52, No. 203

Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

October 16, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

### Reinstatement

- Food and Nutrition Service
- Food Stamp Program—Photo Identification
- Recordkeeping: Monthly; Annually
- Individuals or households: State or local governments; 51,036,898 responses; 326,601 hours; not applicable under 3504(h)
- Paul Jones, 756-3385

### Extension

- Food and Nutrition Service
- State Coupon Issuance and Participation Estimates
- Monthly
- State or local governments; 636 responses; 4,542 hours; not applicable under 3504(h)
- Paul Jones (703) 756-3385

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 87-24388 Filed 10-20-87; 8:45 am]

BILLING CODE 3410-01-M

### National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting.

*Name:* National Commission on Dairy Policy.

*Time And Place:* 8:00 a.m. at the Sheraton National Hotel, Columbia Pike & Washington Blvd., Arlington, Virginia.

*Status:* Open.

*Matters To Be Considered:* On November 2 the Commission will meet to discuss alternative policies to establish and adjust the milk support price. On November 3, the Commission will hear presentations on the subject of demand for dairy products.

*Written Statement May Be Filed Before or After The Meeting With:* Contact person named below.

### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Avenue NW., Suite 1100, Washington, DC 20005, (202) 638-6222.

Signed at Washington, DC, this 14th day of October 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87-24297 Filed 10-20-87; 8:45 am]

BILLING CODE 3410-05-M

## Agricultural Marketing Service

### Public Hearing Regarding the Aberdeen and Carthage, NC Tobacco Markets

Notice is hereby given of a public hearing regarding the Aberdeen and Carthage, North Carolina, tobacco markets.

Date: October 28, 1987.

Time: 10 a.m. local time.

Place: Aberdeen Municipal Building, Commissioner's Room, 105 Sandhills Boulevard, Aberdeen, North Carolina.

Purpose: To hear testimony and to receive other evidence regarding an application for tobacco inspection and price support services for a new flue-cured tobacco market, which would consist of the currently designated markets of Aberdeen and Cathage, North Carolina. The application was made by Mr. Carl Gallimore, President, Gallimore and Lambeth Tobacco Warehouse, Inc., Aberdeen, North Carolina. This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR § 29.1 through 29.3).

Dated: October 20, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87-24543 Filed 10-20-87; 10:54 am]

BILLING CODE 3410-02-M

## Forest Service

### Norbeck Wildlife Preserve, Black Hills National Forest, Custer and Pennington Counties, South Dakota; Revised Notice of Intent To Prepare Environmental Impact Statement

The Department of Agriculture, Forest Service, is preparing an environmental impact statement to consider site-specific activities in the Norbeck Wildlife Preserve which implement or supplement direction in the Black Hills National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan was approved in 1983.



The Notice of Intent, published in the *Federal Register* of October 23, 1986, is hereby revised (51 FR 37615). The new revised dates are as follows: The draft environmental impact statement should be available for public review by summer 1988. The final environmental impact statement is scheduled to be completed by winter 1988.

**FOR FURTHER INFORMATION CONTACT:**

Mary Sue Waxler, Environmental Coordinator, Black Hills National Forest, RR 2 Box 200, Custer, SD 57730; telephone 605/673-2251.

Date: October 13, 1987.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 87-24337 Filed 10-20-87; 8:45 am]

BILLING CODE 3410-11-M

**COMMISSION ON CIVIL RIGHTS**

**Connecticut Advisory Committee;  
Public Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:30 p.m. on November 9, 1987, at the Connecticut Historical Society, 1 Elizabeth Street, Hartford, Connecticut. The purpose of the meeting is to orient new members of the recently rechartered Committee, discuss civil rights issues of interest or concern among the membership, and select topics for a project and for monitoring during Fiscal Year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James H. Stewart (203/486-3417) or John I. Binkley, Director of the Eastern Regional Division at (202/523-5264; TDD 202/376-8117.) Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 9, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-24338 Filed 10-20-87; 8:45 am]

BILLING CODE 6335-01-M

**DEPARTMENT OF COMMERCE**

**Agency Forms Under Review by the  
Office of Management and Budget  
(OMB)**

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Economic Censuses Advertising and Response Behavior Study

Form Number: Agency—EC-100A(PL) and EC-100B(PL); OMB—NA

Type of Request: New collection

Burden: 12,000 respondents; 4,000 reporting hours

Needs and Uses: This study will measure the penetration and effectiveness of the 1987 Economic Census advertising and promotion activities and will provide vital information on the stimuli that encourage response, and the obstacles that inhibit response. Results obtained from interviews of businesses mailed in the census will aid 1992 census planning.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations

Frequency: One time

Respondent's Obligation: Voluntary  
OMB Desk Officer: Francine Picoult 395-7340

Agency: Bureau of the Census

Title: Agriculture Response Behavior Study

Form Number: Agency—87-A70.A(PL), B(PL), C (PL), and D(PL); OMB—NA

Type of Request: New collection

Burden: 30,400 respondents; 2,533 reporting hours

Needs and Uses: This study is a panel telephone survey designed to evaluate the effectiveness of the public awareness campaign and the census mail data collection procedure in informing and eliciting response from the census universe. The study focuses on the factors that influence the behavior of census recipients to respond to the census.

Affected Public: Farms

Frequency: One time

Respondent's Obligation: Voluntary  
OMB Desk Officer: Francine Picoult 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to

Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: October 15, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-24290 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-07-M

**International Trade Administration**

**Export Trade Certificate of Review**

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application for an amendment to an export trade certificate of review.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an export trade certificate of review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

**FOR FURTHER INFORMATION CONTACT:** John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. A certificate of review protects the holder and the members identified in the certificate from private treble damage actions and from civil and criminal liability under federal and state antitrust laws for the export conduct specified in the certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the *Federal Register* identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C.



552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-A0004."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #87-00004, which was issued on May 19, 1987 (52 FR 19371, May 22, 1987).

Applicant: National Machine Tool Builders' Association ("NMTBA"), 7901 Westpark Drive, McLean, Virginia 22102-4269, Contact: James R. Atwood, legal counsel. Telephone: 202/662-6000.

Application #: 87-A0004.

Date Deemed Submitted: October 8, 1987.

#### Summary of the Application

NMTBA seeks to amend its certificates to:

1. Add each of the following companies as a new "Member" of the certificate: Hurco Companies, Inc., Indianapolis, Indiana; and Manufacturing Technology, Inc., Mishawaka, Indiana (controlling entity: Adams Corp.)
2. Delete each of the following companies as a "Member" of the certificate: ACME-Cleveland Corp.; AMAF Industries, Inc.; Apex Corporation; Automated Machine Tool Technology, Inc.; Barker Milling Machine Company; Farrel Company; Harvill Machine Inc.; Hydra-Tool Corp.; Laser Systems Division; Lehman Division of Smith International Inc.; MG Cutting Systems; MHP Machines, Inc.; V & O Press Company, Inc.; Wadell Equipment Company, Inc.; Wardwell Mfg. Co., Inc.; and the Wheelabrator Corp.
3. Replace the current "Members" Landis Tool Co. and Lamb Technicon Corp. with their controlling entity Litton Industrial Automation Systems, Inc. (Litton Industrial Automation Systems, Inc. recently acquired the Lamb Technicon Corp.)
4. Replace the current "Member" Teledyne Landis Machine with its controlling entity, Teledyne Industries, Inc.
5. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: APEC-Guill Technologies Inc. (APEC/CPM Guill Technologies Inc.); Automated Machine Tool Technology, Inc. (ACROLOC/CNC Systems); Cam-Apt, Inc. (CAM-APT Technologies); Chemtool Deburring Systems (CHEMTOOL, Incorporated); Clearing (USI Clearing); C.O. Hoffacker Company (C.O. Hoffacker Co. Division of the Hoff Co.); Dake (Dake Division, JSS Corporation); Davenport Machine Tool

Division (Davenport Machine-A Dover Industries Company; ES-Tech (Equipment Systems); Fairfield Machine (Fairfield Machine Co., Inc.); Geometric Tool (Geometric Tool-Division Greenfield Industries); Giddings and Lewis (Giddings and Lewis-A Division of Amco International Corporation); Hansvedt EDM Division (Hansvedt); Harper Buffing Machine (Harper Company); HE&M Saw (HEM, Inc.); P.R. Hoffman (P.R. Hoffman Machine Products Co.); Imperial Stamp & Engraving Company (Imperial Stamp & Engraving Co., Inc.); Industrial Development Systems (Industrial Development Systems, Inc.); Intertech Automation Company (Intertech Development Company); ITW Illitron (Illinois Tool Work Inc.); Livernois Automation Company (Livernois Engineering Co.); The Lodge & Shipley Company (Lodge & Shipley/Manuflex); Lyon Machine Builders Div. (Lyon Machine Builders); Miller Fluid Power Corporation (Miller Fluid Power); National Automatic Tool Co., Inc. (NATCO, Inc.); The Olofsson Corporation (Olofsson Corporation); Peerless Saw Division (Peerless Saws); PMC Industries (PMC Industries, Inc.); Republic Lagun Machine Tool Co. (Republic Lagun CNC Corporation); S-P Manufacturing Corporation (The S-P Manufacturing Corporation); Geo. T. Schmidt Division (Geo. T. Schmidt); Universal Engineering (Universal Engineering Div. Stanwich Industries Inc.); Valenite-Kamset (GTE Valenite Corporation); Vulcan Tool Company (Vulcan Tool Corp.).

Dated: October 16, 1987.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 87-24378 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DR-M

#### Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held November 16, 1987, 8:30 a.m., in the Federal Building, Room 4S13, 880 Front Street, San Diego, California.

The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

#### Agenda

1. Opening Remarks by the Chairman.

2. Presentation of papers or comments by the public.
3. Licensing Procedures 1987 and 1988 agenda:
  - a. Discussion and suggestions for a "User Friendly Guide to the Export Administration Regulations" that will be prepared by the Subcommittee and the Department of Commerce. Please submit suggestions as to what areas you feel guidance is needed in the use and interpretation of the Export Administration Regulations.
  - b. Regulatory Agenda for 10 proposed changes to the Export Administration Regulations.

The public is requested to come prepared with suggestions as to what regulations you feel are deserving of special attention over the next year in prioritizing the top 10 suggested changes.

The meeting will be open to the public with a limited number of seats. For further information or copies of the minutes, call Betty Ferrell at 202/377-2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-24381 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DT-M

#### Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held November 16, 1987, 11:00 a.m. in the Federal Building, Room 4S13, 880 Front Street, San Diego, California. The Software committee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

#### General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Response to communication on technical data related to missile systems.

#### Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.



The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377-2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-24382 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DT-M

#### **Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting**

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held November 16, 1987, 3:00 p.m. in the Federal Building, Room 4S13, 880 Front Street, San Diego, California. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

##### *Open Session*

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.

3. Discussion of improvements in West-West controls for computers.

4. Discussion of newly published regulations pertaining to hardware.

##### *Executive Session*

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377-2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-24383 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DT-M

#### **Computer Systems Technical Advisory Committee; Partially Closed Meeting**

A meeting of the Computer Systems Technical Advisory Committee will be held November 17, 1987, 8:30 a.m., in the Federal Building, Room 2S13, 880 Front Street, San Diego, California. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls

applicable to computer systems or technology.

##### *Open Session*

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation on Local Area Networks—A Review of Technology.
4. Schedule for future tutorials.
5. Invitation for new Computer Systems Technical Advisory Committee Members.

##### *Executive Session*

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377-2583.

Date: October 16, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-24384 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DT-M



## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Proposed Correlation: Textile and Apparel Categories With Tariff Schedules of the United States Annotated 1988; Correction

October 16, 1987.

On September 30, 1987, a notice was published in the *Federal Register* (52 FR 36604) which announced the availability of the proposed Correlation for 1988.

The purpose of this notice is to notify the public that the cost of the proposed Correlation is \$30, instead of \$80 as stated in that announcement.

Arthur Garel,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-24328 Filed 10-20-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Third Annual F. Edward Hebert School of Medicine, Conference on Military Medicine; Infectious Disease, Implications for the Practice of Military Medicine; Meeting

The Third Annual Conference on Military Medicine will be held on October 26 and 27, 1987 at the Uniformed Services University of the Health Sciences, Bethesda, Maryland. The theme of the 1987 Conference is "Infectious Disease: Implications for the Practice of Military Medicine." The Conference will consist of speakers, panel discussions and poster presentations. Topics will include "Evolving Military Immunization Policies," "Appropriate Use of Prophylactic Antibiotics in War Wounds," "Malaria Prevention and Treatment in Military Deployment," and "AIDS: Ethical Issues in the Practice of Medicine." In addition to the formal presentations, USUHS faculty will be available to answer questions during a round table session during a "Meet the Professor" luncheon.

The Conference is sponsored by the Regents/Alumni Fund of the Henry Jackson Foundation for the Advancement of Military Medicine, and the USU Alumni Association, Inc.

The 1987 Conference will be dedicated to David I. Olch, M.D., Chairman of the USUHS Board of Regents, who passed away August 17, 1987. Dr. Olch served as Chairman of the University's Board of Regents from 1982 until his death. Dr. Olch also served as an ex-officio member of Council of

Directors of the Henry M. Jackson Foundation. In his memory, a lectureship in military medicine will be given annually at the Conference. BG W.D. Tigertt, MC, USA (RET) will present the 1987 lecture titled "Infectious Disease: Implications for the Practice of Military Medicine."

Requests for registration brochures are available by contacting Ms. Katie Lowe Lancaster, USUHS, 4301 Jones Bridge Road, Bethesda, MD, 20814-4799 or call (202) 295-2690, autovon 295-2690.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

October 15, 1987.

[FR Doc. 87-24306 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-01-M

#### Defense Science Board Task Force on Low Observable Technology; Meeting Cancellation

**ACTION:** Cancellation of meeting.

**SUMMARY:** The meeting notice for the Defense Science Board Task Force on Low Observable Technology for October 27-28, 1987 as published in the *Federal Register* (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc 87-21957) has been cancelled.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

October 15, 1987.

[FR Doc. 87-24308 Filed 10-20-87; 8:45am]

BILLING CODE 3810-01-M

#### Defense Science Board Task Force on Low Observable Technology; Change of Date; Advisory Committee Meeting

**ACTION:** Change in date of advisory committee meeting notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for December 8-9, 1987 and February 10-11, 1988 as published in the *Federal Register* (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc. 87-21957) will be held on December 15-16, 1987 and February 17-18, 1988.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

October 15, 1987.

[FR Doc. 87-24307 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-01-M

## Defense Logistics Agency

### Privacy Act of 1974; Amendment of Existing Computer Matching Program Between Department of Defense and Department of Housing and Urban Development

**AGENCY:** Defense Logistics Agency, DOD.

**ACTION:** This action constitutes public notice for comment on a proposed amendment to an existing ongoing computer matching program between the Department of Defense (DoD) and the Department of Housing and Urban Development (HUD).

**SUMMARY:** On June 30, 1986 at 51 FR 23574, to DoD gave public notice of a continuing Computer Matching Program between DoD and HUD. That matching program consisting of a program by HUD as a source agency and DoD as the matching agency to identify and locate Title I loan defaulters is being expanded to also include Single Family Mortgage defaulters who are Federal employees, including active and retired military civilian personnel, for the purpose of discharging the debts owed to U.S. Government under the Debt Collection Act of 1982 (Pub. L. 97-365). This is being accomplished by including two more systems of records to be matched in this program. These are HUD/DEPT-2, "Accounting Records" and Defense Logistics Agency's S322.11 DLA-LZ, "Federal Creditor Agency Debt Collection Data Base." The amended matching report is set forth below.

**DATE:** The proposed action will be effective, without further notice on November 20, 1987 unless comments are received which would result in a contrary determination.

**ADDRESS:** Send written comments to Mr. Robert J. Brandewie, Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940-3231. Telephone: (408) 646-2951; Autovon: 878-2951.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202-2803. Telephone: (202) 694-3027; Autovon: 224-3027.

**SUPPLEMENTARY INFORMATION:** Set forth below is an amended matching report containing the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, dated May 11, 1982, issued by the Office of Management and Budget and published in the *Federal Register* at 47 FR 21656, May 19, 1982. A copy of the original notice for this



matching program was provided to both Houses of Congress and the Office of Management and Budget on June 19, 1986 pursuant to Appendix I of OMB Circular No. A-130 "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 and published in the *Federal Register* at 50 FR 52730 on December 24, 1985.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

**Report of a Continuing Computer Matching Program Between the Department of Defense (DOD) and the Department of Housing and Urban Development (HUD)**

a. *Authority:* The legal authority under which the computer matching is being conducted is Title I Sec. 2, National Housing Act, 12 U.S.C. Chapter 13; 5 U.S.C. 5514 "Installment deduction of indebtedness"; 10 U.S.C. 136 "Asst. Secretaries of Defense, appointment, powers and duties"; Federal Claims Collection Act of 1966 (Pub. L. 89-508) 31 U.S.C. 952(d); the Debt Collection Act of 1982 (Pub. L. 97-365) 5 U.S.C. 5514, 31 U.S.C. 3711 and 3716-3718; Section 206 of Executive Order 11222; 4 CFR Chapter II "Federal Claims Collection Standards (General Accounting Office—Department of Justice)"; 5 CFR 550.1101-.1108 "Collection by Offset from Indebted Government Employees"—OPM; Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987).

b. *Program Description:* The computer matching program will identify Federal employees who have Title I or Single Family Mortgage defaulted loans for the purpose of discharging the debts owed the U.S. Government through salary and benefit offsets. Federal employees is defined as a current or retired employee paid from appropriated funds; a member of the Armed Forces including members of the Reserve Components of the United States and retirees; an employee of the U.S. Postal Service or member of the Postal Rate Commission.

HUD, as the source agency, will submit the social security numbers and

names of their Title I and Single Family Mortgage loan defaulters to the DoD to identify which defaulters are current Federal employees (hits). DoD, as the matching agency, will supply HUD with the most recent employment and/or home address available on the hits so as to permit HUD to contact the debtor to arrange voluntary repayment. If adequate repayment arrangement cannot be made, HUD will request the appropriate Federal agency to initiate prompt and effective collection action through administrative or salary offset procedures against the delinquent employee under the provisions of the Debt Collection Act of 1982 until the debt is liquidated.

c. *Records to be Matched:* The systems of records subject to the Privacy Act of 1974, as amended, to be matched are as follows:

**HUD Record Systems (Source Agency)**

- (1) System Identification: HUD/DEPT-2  
System Name: Accounting Records.  
Federal Register Citation: 50 FR 18933, May 3, 1985; Amended: 52 FR 22688, June 15, 1987
- (2) System Identification: HUD/DEPT-28  
System Name: Property Improvement and Manufactured (mobile) Home Loans.  
Federal Register Citation: 50 FR 18934, May 3, 1985

**DOD Record Systems (Matching Agency)**

- (3) System Identification: S322.10 DLA-LZ  
System Name: Defense Manpower Data Center Data Base.  
Federal Register Citation: 51 FR 30104, August 22, 1986
- (4) System Identification: S322.11 DLA-LZ  
System Name: Federal Creditor Agency Debt Collection Data Base.  
Federal Register Citation: 52 FR 37492, October 7, 1987
- (5) System Identification: S322.53 DLA-LZ  
System Name: Defense Debt Collection Data Base.  
Federal Register Citation: 50 FR 22921, May 29, 1985

d. *Period of the Match:* This ongoing matching program will begin as soon as possible after this public notice becomes effective as set forth under "DATE" in the preamble of this notice and will be conducted annually thereafter.

e. *Security:* Manual files are kept in lockable cabinets or rooms; automated records are maintained in secured areas. Access to either type of record is limited to authorized personnel only.

f. *Retention and disposition of Records:* Pursuant to a written

memorandum of Understanding (MOU), tapes received by the DoD will be returned to HUD upon successful completion of the match. "Hit" records will be used by HUD to collect the debt and will be disposed of upon completion of the debt collection action.

Information on "non-hit" records will not be used for any purpose. DoD agrees that the information provided by HUD will not be used or disclosed without the specific permission of HUD and that files concerning "non hit" individuals will not be used for any purpose unless agreed to by HUD.

[FR Doc. 87-24305 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-01-M

**Department of the Air Force**

**Advisory Committee on the Air Force History Program; Meeting**

October 13, 1987.

The Advisory Committee on the Air Force History Program will hold a meeting on December 7, 1987 from 8:30 a.m. to 4:00 p.m. and December 8, 1987 from 8:30 a.m. to 12:00 noon at Bolling AFB, DC., Building 5681, Office of Air Force History's 2nd floor conference room. The purpose of the meeting is to examine the mission, scope, progress and productivity of the Air Force History Program and make recommendations thereon for the consideration of the Secretary of the Air Force. The meeting will be open to the public. Topics to be discussed include: organization and personnel, current status of historical projects, and the status of the field history program.

For further information contact Lt Col John E. Norvell, Executive Officer, Office of Air Force History, Bolling AFB, DC, telephone (202) 767-5764.

Patsy J. Conner,

Air Force Federal Register Liaison Office.

[FR Doc. 87-24416 Filed 10-20-87; 8:45 am]

BILLING CODE 3910-01-M

**Department of the Navy**

**Chief of Naval Operations; Executive Panel Advisory Committee; Closed Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet November 12-13, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford



Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine Warfare capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: October 15, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve,  
Federal Register Liaison Officer.

[FR Doc. 87-24287 Filed 10-20-87; 8:45 am]

BILLING CODE 3810-AE-M

## DELAWARE RIVER BASIN COMMISSION

### Meeting and Public Hearing

Notice hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 28, 1987 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjects of the hearing will be as follows:

*Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings.* Notice was given in the August 25, 1987 *Federal Register*, Vol. 52, No. 164, page 32024, that the Commission would hold a public hearing on October 28, 1987 to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing

fixtures and fittings. The proposed amendment would require that all such performance standards adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates are specified as are certain specialized fixtures and fittings not covered by the proposed regulation. The proposal also requires certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. Periodic review of the performance standards would also be required to allow for incorporation of more stringent water conservation performance standards as technology advances. Finally, Pennsylvania political subdivisions or their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with standards proposed herein have been adopted within their area of jurisdiction. The comment closing date will be determined at the hearing.

*A Proposal to Adopt the 1987 Water Resources Program.* A proposal that the 1983 Water Resources Program Approved on November 30, 1983, as extended and adopted respectively by DRBC Resolution Nos. 84-27, 85-42 and 86-25, as the 1984, 1985 and 1986 Water Resources Program, be extended and adopted as the 1987 Water Resources Program, in accordance with the requirements of section 13.2 of the Delaware River Basin Compact.

*Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:*

1. *Holdover Project: Township of Falls Authority D-86-17 CP.* An application for revision of the Comprehensive Plan to include expansion of the existing Falls Township Authority Sewage Treatment Plant from 3.2 million gallons a day (mgd) secondary treatment to 5.0 mgd tertiary treatment. The existing facility is located at Newportville Road and Ford Road in Bristol Township, Bucks County, Pennsylvania. Treated effluent will continue to be discharged to Neshaminy Creek, 350 feet downstream of the existing point of discharge. The expanded plant is designed to serve projected flows through the year 2010. This hearing continues that of September 22, 1987.

2. *Holdover Project: National Park Service, Delaware Water Gap National Recreation Area General Management Plan D-87-65 CP.* An application for

inclusion in the DRBC's Comprehensive Plan, a General Management Plan which provides for development of natural, scenic and historic features of the Delaware Water Gap National Recreation Area. The Plan addresses facility development, visitor activities, resource management and land protection efforts. The Plan will guide overall management and use of the area's resources over the next ten years, and provide the foundation for subsequent detailed implementation plans, programs and operation. This hearing continues that of September 22, 1987.

3. *Pfizer Pigments, Inc. D-86-23.* An application to permit an existing discharge to contain up to 10,000 mg/1 (monthly average) of total dissolved solids (TDS). Existing docket approval (D-71-170) indicates the discharge would contain 1,000 mg/1 of TDS. The discharge of up to 0.95 mgd containing an average of 10,000 mg/1 of TDS would cause an increase of more than 33 percent in the receiving stream, Bushkill Creek, during periods of low flow and therefore the applicant has requested a waiver of that regulation. The applicant's wastewater treatment plant is located in the City of Easton, Northampton County, Pennsylvania. The treatment plant effluent is discharged to the Bushkill Creek at River Mile 184.1-2.55. Pfizer Pigments, Inc. has submitted an "Analysis of Alternatives" and an environmental impact study as the basis for the application. No increase in the approved 0.95 mgd discharge volume is requested.

4. *Simpson Paper Company D-86-50.* An application for a wastewater treatment plant upgrading to serve the Valley Forge Mill of the Simpson Paper Company located in Whitemarsh Township, Montgomery County, Pennsylvania. The existing secondary plant processes 2.1 mgd (design average dairy flow) of wastewater in physical and chemical treatment facilities. The proposed plant is designed to reduce influent BOD and SS loadings by 85 percent. A biological treatment system will be added to achieve this objective. Due to water conservation measures the raw wastewater flow will be reduced 0.5 mgd. The 1.6 mgd of treatment plant effluent will be discharged to the Schuylkill River through the existing outfall.

5. *Moyer Packing Company D-87-5.* A ground water withdrawal project to supply up to 1.95 million gallons (mg)/30 days to the applicant's Mainland Plant meat processing facility in Lower Salford Township, Montgomery County, Pennsylvania. Existing Well Nos. 19 and



21 were placed in service by the previous owner. Ground water from the wells is used in conjunction with water purchased from the North Penn Water Authority. The plant is located about 1,000 feet northeast of the intersection of Sumneytown Pike (Route 63) and Store Road in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Warrington Township Municipal Authority (WTMA) D-87-18 CP.* An application by the WTMA to incorporate two existing wells previously owned and operated by Warrington Water Company (WWC) (formerly Well Nos. 1 and 2) into the WTMA water system to provide up to 9.0 mg/30 days. The wells (Nos. 8 and 9) have been interconnected into the WTMA system, and jointly with the other WTMA supply wells, will serve the former WWC franchise area along with the existing service area. The wells are located near the intersection of Oakfield Road and Route 611 in Warrington Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Hercules Incorporated D-87-43.* An application for approval of an expanded ground water decontamination project to withdraw up to 6.1 mg/30 days of water from the applicant's proposed ground water recovery Well Nos. PW-9, PW-10 and PW-11. Eight existing wells have an approved withdrawal limit of 10 mg/30 days and with the new wells the total withdrawal is requested to be increased to 13 mg/30 days. Upon completion of the construction of the proposed wells, the applicant plans to modify the use of recovery Well Nos. PW-5 and PW-7 to serve as monitoring wells only. The applicant has also requested a waiver from DRBC effluent quality requirements regarding the 85 percent removal of the total suspended solids (TSS) concentration. It has been determined that the BCT wastewater treatment process at the applicant's Gibbstown Plant increases TSS in the industrial wastewater. The applicant proposes to meet the TSS discharge concentration limits issued by the EPA for this industrial classification. Approval of a discharge of up to 84 mg/1 of TSS is requested. The project is located in Greenwich Township, Gloucester County, New Jersey. Treatment plant effluent will continue to be discharged to the Delaware River in Water Quality Zone 4.

8. *Upper Southampton Sewer Authority D-87-52 CP.* An application to expand a 0.12 mgd sewage treatment plant to process a design average flow of 0.22 mgd through the year 2000. The proposed plant is designed to serve an

equivalent population of 2,200 residents in portions of Lower Moreland Township, Montgomery County and Upper Southampton Township, Bucks County, Pennsylvania. The plant is located off the Pennsylvania Turnpike near its intersection with County Line Road. Treatment plant effluent will continue to be discharged to an unnamed tributary of Southampton Creek, but a parallel outfall line will be constructed to convey this flow.

9. *Muhlenberg Township Authority D-87-58 CP.* An application for approval of a ground water withdrawal project to supply up to 64.8 mg/30 days of water to the applicant's distribution system from new Well No. 14, and to retain the existing withdrawal limit from all wells of 151.2 mg/30 days. The project is located in Muhlenberg Township, Berks County, Pennsylvania.

10. *Panther Creek Energy, Inc. D-87-66.* An application to withdraw up to 103.2 mg/30 days of ground water from inundated mine shafts for use as cooling water in a proposed electric generation facility and for the discharge of cooling and process wastewater to a nearby mine pool. The proposed 80 MW facility straddles the municipal boundary between Summit Hill and Lansford Boroughs in Carbon County, Pennsylvania. Approximately 60 million tons of low grade anthracite coal breaker refuse will serve as the principal fuel for the proposed facility. Culm bank surrounds the project site in Panther Valley on an area of over 1000 acres. After pretreatment and post-treatment a combined discharge of up to 1.773 mgd of cooling water and process wastewater will be discharged to Nesquehoning Mine Pool. There will be no discharges to any surface stream.

11. *Public Service Electric and Gas Company D-87-70.* An application to construct a sewage treatment plant (STP) to replace the two existing STPs serving the applicant's Hope Creek and Salem Generating Stations on Artificial Island in Lower Alloways Creek Township, Salem County, New Jersey. The proposed STP is designed to more effectively handle periodic fluctuations of on-site population due to scheduled and unscheduled maintenance operations. The proposed variable level oxidation ditch system is designed to provide high quality secondary treatment of an average flow of 0.07 mgd and a peak flow of 0.28 mgd. Treatment plant effluent will be discharged to the Delaware River in Water Quality Zone 5 through the existing Hope Creek Generating Station STP (and stormwater) outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,  
Secretary.

October 13, 1987.

[FR Doc. 87-24339 Filed 10-20-87; 8:45 am]

BILLING CODE 6360-01-M

## DEPARTMENT OF EDUCATION

[CFDA No. 84.094C]

### Invitation of Applications for New Awards Under the Patricia Roberts Harris Fellowships Program; Public Service Education Fellowships for Fiscal Year 1988

*Purpose:* Provides grants to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who plan to pursue a career in public service at all levels of government or in non-profit community service organizations. Public Service Education Fellowships are intended to provide opportunities for qualified students, particularly individuals from traditionally underrepresented groups.

*Deadline for Transmittal of Applications:* January 22, 1988.

*Applications Available:* November 27, 1987.

*Available Funds:* The Administration's budget for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow for sufficient time to evaluate applications and complete the grant process prior to the end of the fiscal year, should the Congress appropriate funds for this program.

The following estimates are based upon the FY 1987 appropriations:

*Estimated Range of Awards:* \$16,000-\$95,979.

*Estimated Average Size of Awards:* \$64,000.

*Estimated Number of Awards:* 40 to 82.

*Project Period:* 9 to 12 months.

*Applicable Regulations:* (a) The Patricia Roberts Harris Fellowships Program Regulations, 34 CFR Part 649, and (b) the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, and 77, as provided in 34 CFR 649.3.



*For Applications or Information*  
 Contact: Dr. Charles H. Miller on (202) 732-4395 or Mrs. Barbara J. Harvey on (202) 732-4963, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue SW., Room 3022, ROB-3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134d-1134f.

Dated: October 13, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-24301 Filed 10-20-87; 8:45 am]

BILLING CODE 4060-01-M

## Fund for the Improvement of Postsecondary Education

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed priority for the Fund for the Improvement of Postsecondary Education (FIPSE) Lectures Program for Fiscal Year 1988.

**SUMMARY:** The Secretary proposes a Lectures Program to be conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) on important issues in postsecondary education.

**DATE:** Comments must be received on or before November 20, 1987.

**ADDRESSES:** All written comments and suggestions should be sent to Dr. Charles H. Karlis, Director, Fund for the Improvement of Postsecondary Education, Office of Postsecondary Education, (Room 3100, ROB-3), Department of Education, 400 Maryland Avenue, SW., Mail Stop 3331, Washington, DC 20202.

**SUPPLEMENTARY INFORMATION:** Grants for the FIPSE Lectures Program are authorized by Title X of the Higher Education Act of 1965, as amended (20 U.S.C. 1135). Program regulations are established at 34 CFR Part 630. As was the case for the FY 1987 Lectures Program, this program would be conducted as a Special Focus competition under 34 CFR 630.11 (b)(1) of the program regulations. The purpose of the FIPSE Lectures Program would be to provide modest sponsorship for promising work on key issues in postsecondary education, and to promote dissemination and discussion of this work among educational leaders, policy makers, faculty, students, and the general public. The program would enable individuals to devote at least a month to the development of ideas for presentation in lecture form at educational and other conferences, or in the context of established lecture programs such as those at colleges and universities.

## Funds Available

The President has requested \$7,500,000 in his FY 1988 budget request for FIPSE. The Department anticipates that \$30,000 will be available for a new awards under the FIPSE Lectures Program early in the fiscal year. It is estimated that 6 grants of no more than \$5,000 each will be made during FY 1988.

## Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that would carry out the FIPSE Lectures Program.

## Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the establishment of this proposed lectures program. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted in response to this proposed program will be available for public inspection during and after the comment period, in Room 3100, ROB-3, 7th & D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.116G Fund for the Improvement of Postsecondary Education)

(20 U.S.C. 1135)

Dated: October 2, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-24300 Filed 10-20-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER88-16-000, et al.]

### Georgia Power Co., et al.; Electric Rate and Corporate Regulations Filings

Take notice that the following filings have been made with the Commission:

#### 1. Georgia Power Company

[Docket No. ER88-16-000]

October 13, 1987.

Take notice that on October 7, 1987, Georgia Power Company tendered for filing a change in rates for Service Schedule A and Service Schedule B of the Interchange Contract between Georgia Power and Crisp County Power Commission, dated July 1, 1980 (Georgia

Power's FERC Rate Schedule No. 803). The proposed change would reduce the return on common equity component of the formula rate described in the Service Schedules from 15.0% to 14.0%.

Georgia Power requests an effective date of September 1, 1987, for this rate decrease. Copies of the proposed changes were served upon Crisp County Power Commission.

*Comment date:* October 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Georgia Power Company

[Docket No. ER88-17-000]

October 13, 1987.

Take notice that on October 7, 1987, Georgia Power Company tendered for filing a change in rates for Service Schedule A and Service Schedule B of the Interchange Contract between Georgia Power and Savannah Electric & Power Company dated August 1, 1979 (Georgia Power's FERC Rate Schedule No. 798). The proposed change would reduce the return on common equity component of the formula rate described in the Service Schedules from 15.0% to 14.0%.

Georgia Power requests an effective date of September 1, 1987, for this rate decrease. Copies of the proposed changes were served upon Savannah Electric & Power Company.

*Comment date:* October 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

#### 3. UNITIL Power Corporation

[Docket No. ER87-209-001]

October 13, 1987.

Take notice that on September 24, 1987, UNITIL Power Corporation (UNITIL Power) tendered for filing amendments to an initial rate schedule for transmission service for Public Service Company of New Hampshire (PSNH) filed on December 31, 1986.

This filing was in response to July 10, 1987 and August 10, 1987 letters from Jerry R. Milbourn requesting supplemental information and revisions to the filing, including the License Agreement between UNITIL Power and Exeter & Hampton Electric Co.

UNITIL Power requests that the Commission waive its standard notice period and allow the amendments to become effective on October 1, 1986. UNITIL Power states that PSNH has consented to this effective date.

UNITIL Power states that a copy of this rate schedule has been mailed to PSNH at Manchester, New Hampshire, and is being filed with the New Hampshire Public Utilities Commission.



*Comment date:* October 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Utah Power & Light Company PacifiCorp PC/UP&L Merging Corporation

[Docket No. ER88-2-000]

October 14, 1987.

Take notice that on October 5, 1987, Utah Power & Light Company (UP&L), PacifiCorp and PC/UP&L Merging Corp. (PacifiCorp Oregon) tendered for filing under section 203 of the Federal Power Act, 16 U.S.C. 824(b), a Joint Application seeking approval of a proposed merger. UP&L is engaged principally in the business of generating and selling energy in Utah, Southeastern Idaho, and Southwestern Wyoming. PacifiCorp is a diversified corporation doing business as Pacific Power & Light Company (PP&L) and PP&L is engaged in generating and selling electric energy in California, Idaho, Montana, Oregon, Washington, and Wyoming. UP&L and PP&L have together approximately 1,180,000 retail customers. Both also serve numerous wholesale customers.

Under the merger proposal, UP&L and PacifiCorp will merge within and into PacifiCorp Oregon. (to be renamed PacifiCorp upon completion of the merger). PacifiCorp Oregon will continue to operate and conduct business in the service territories under the assumed business names of UP&L and PP&L. Under the plan of merger, PacifiCorp Oregon will assume and perform all contracts, leases or other agreements or commitments to which UP&L or PP&L are parties which relate in any way to the business and operations of the two companies. PP&L and UP&L will perform those contractual obligations in their respective jurisdictions as an assumed name of PacifiCorp Oregon. The parties to the merger anticipate no adverse impact on their resale or transmission customers.

Copies of this filing have been served upon the State Commissions of Arizona, California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

*Comment date:* November 2, 1987, in accordance with Standard Paragraph E at the end of this document.

#### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24412 Filed 10-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-5-000, et al.]

#### Lone Star Gas Co., et al.; Natural gas Certificate filings

Take notice that the following filings have been made with the Commission:

##### 1. Lone Star Gas Company a Division of ENSEARCH Corporation

[Docket No. CP88-5-000]

October 14, 1987.

Take notice that on October 2, 1987, Lone Star Gas Company, a Division of ENSEARCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP88-005-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps and appurtenant facilities under the certificate issued in Docket Nos. CP83-59-000 and CP83-59-001, as amended in Docket No. CP83-59-002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes to sell approximately 100 Mcf of natural gas on an annual basis to each of the following residential customers:

##### Customer, Location, and Line

Tammy Dscobebo, McCurtain County, Oklahoma, E32-3-3

Luke Reid, McCurtain County, Oklahoma, E32-3-3

Lone Star proposes to sell approximately 48,000 Mcf of natural gas on an annual basis to the following industrial customer:

##### Customer, Location, and Line

Tyson Foods, Inc., McCurtain County, Oklahoma, E32-3-4

Sales to each of these customers will be made at the appropriate residential and industrial rates as approved by the Oklahoma Corporation Commission.

*Comment date:* November 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

#### 2. Florida Gas Transmission Company

[Docket No. CP87-560-000]

October 15, 1987.

Take notice that on September 30, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston Texas 77251-1188, filed in Docket No. CP87-560-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport on an interruptible basis up to 250,000 MMBtu of natural gas for Enron Gas Marketing, Inc. (EGM), from 4 existing receipt points in Texas and Mississippi to one existing delivery point in Louisiana, pursuant to a transportation agreement dated August 25, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that it would receive gas at interconnections with Houston Pipe Line Company (HPL) in Orange and Matagorda Counties, Texas, and with Prosper Energy Corporation and Exxon Company, U.S.A., in Pearl River County, Mississippi. FGT states that it would deliver equivalent volumes for EGM's account, less EGM's pro rata share of compressor fuel and company use gas, at an existing interconnection between FGT and Transcontinental Gas Pipe Line Corporation (Transco) in St. Helena Parish, Louisiana. FGT proposes to charge EGM a transportation rate consisting of a Facility Charge of 7.3 cents per MMBtu of gas delivered and a Service Charge of 3.9 cents per MMBtu per 100 miles of forward haul transportation. It is stated that in addition to these charges, FGT would collect the currently effective GRI surcharge and the ACA surcharge of 0.21 cents per MMBtu proposed to FGT to become effective on October 1, 1987.

It is explained that no construction of facilities would be required to effect the proposed transportation service. It is asserted that there would be no adverse impact on FGT's existing customers, because the proposed service would be on a fully interruptible basis. FGT states that the transportation agreement is for a primary term of 10 years from the date of initial delivery and from year to year thereafter. FGT asserts that any transportation required by HPL prior to receipt by FGT would be performed by HPL under Section 311 authorization.

*Comment date:* November 5, 1987, in accordance with Standard Paragraph F at the end of this notice.



### 3. Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP81-482-004]

October 15, 1987.

Take notice that on September 25, 1987, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP81-482-004 a petition to amend the order issued May 14, 1982, as amended, pursuant to section 7(c) of the Natural Gas Act so as to decrease the transportation quantity and increase the excess transportation quantity and to revise certain parts of the rate section and the term section of the Gas Transportation Agreement (GTA) between Tennessee and Amoco Production Company (Amoco), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that it is currently authorized to transport 65,000 Mcf/d for Amoco and that upon request it is authorized to transport an additional 25,000 Mcf/d as an excess transportation quantity. Tennessee indicates that such volumes are transported to assist Amoco in meeting existing warranty obligations with Florida Gas Transmission Company (Florida) and Florida Power and Light Company (FP&L).

Tennessee further states that it has been advised by Amoco that its warranty obligation with Florida has expired and that its warranty obligation with FP&L will soon expire and that Amoco has requested that the GTA be amended to allow for the transportation of Amoco's uncommitted gas for sale to Florida, FP&L and others under existing or future agreements.

Tennessee proposes to amend the GTA to provide for a transportation quantity of 21,000 Dth/d and at such times as Amoco has designated the transportation quantity of 21,000 Dth/d Amoco shall have the right to request up to 70,000 Dth/d as an excess transportation quantity.

*Comment date:* November 5, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

### Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP87-358-001]

October 15, 1987.

Take notice that on October 6, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-358-001 to amend its application filed in Docket

No. CP87-358-000 pursuant to section 7(c) of the Natural Gas Act so as to construct and operate \$1.764 million in additional facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP87-358-000, Applicant requested authority to (1) increase its firm natural gas sales service to ten existing customers in New England by an aggregate daily maximum quantity of 91,358 Dth and by an aggregate annual sales entitlement (Annual Quantity Limitation or "AQL") of 24,418,257 Dth, and (2) construct and operate \$39,460,000 in facilities to provide the increased service.

Applicant proposes in Docket No. CP87-358-001 to (1) construct an additional 2.1 miles of 30" main line looping in Madison County, New York at a direct cost of \$1,764,000, and (2) uprate existing station 261 by 1000 Hp which would increase the total authorized horsepower to 6910 Hp. Applicant states that the total project cost of all Tennessee facilities proposed in Docket Nos. CP87-358-000 and 001 to provide the increased sales service is estimated to be \$49,845,000, including overheads, AFUDC, and regulatory fees.

*Comment date:* November 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 5. Columbia Gas Transmission Corporation

[Docket No. CP88-4-000]

October 15, 1987.

Take notice that on October 1, 1987, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-4-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to lease capacity in certain natural gas facilities, and for pre-granted approval to abandon the lease of capacity in certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to lease capacity up to a maximum quantity of 183,800 Mcf per day in its Kentucky System to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) commencing November 1, 1987, and continuing for a primary term of twenty years. Columbia also requests pre-granted abandonment authority upon the termination or expiration of the term of the lease arrangement. It is indicated that Applicant's Kentucky System

consists of approximately ninety miles of pipeline and appurtenances extending from an interconnection with Columbia Gulf Transmission Company in Menifee County, Kentucky, to various points of interconnection with The Union Light, Heat and Power Company (Union Light) in Campbell County, Kentucky, and with The Cincinnati Gas and Electric Company (CG&E) in Hamilton County, Ohio.

Applicant states that Tennessee would utilize the capacity in the Kentucky System for the purpose of delivering on a firm basis up to a maximum quantity of 183,800 Mcf per day exclusively on behalf of CG&E and/or Union Light at existing points of interconnection.

Applicant proposes to charge Tennessee an annual lease payment based upon Tennessee's proportionate share of the net depreciated book cost of the Kentucky System as of October 31, 1987, allocated on the ratio of Tennessee's capacity of 183,800 Mcf per day to the total capacity of the Kentucky System of 659,600 Mcf per day. Applicant states that Tennessee would reimburse Columbia for its proportionate share of all prudently incurred expenses, including operation and maintenance and replacement costs (except for replacement attributable to facilities added after the date of this application to provide capacity for parties other than Tennessee) allocated on the ratio of Tennessee's capacity of 183,800 Mcf per day to the total capacity of the Kentucky System of 659,600 Mcf per day. Applicant would bill Tennessee monthly for these expenses based upon its estimated cost which would be adjusted from time to time to the actual cost. It is submitted that Applicant would retain for company-use and unaccounted-for quantities (Fuel) a percentage of the gas delivered by Tennessee into the Kentucky System. Applicant states that the percentage of Fuel retainage would be that set forth in the currently effective Sheet No. 16A2 of Applicant's FERC Gas Tariff, Original Volume No. 1, which is currently 2.63 percent.

Applicant states that it would continue to operate and maintain the facilities.

Applicant also states that, to effectuate the proposed lease of capacity to Tennessee, it would be necessary for CG&E and Union Light to reduce their combined Total Daily Entitlement with Applicant by 119,290 dekatherms (dt) equivalent per day in Applicant's Rate Zone 3. Applicant requests authority to lease capacity to Tennessee conditioned upon Applicant



receiving acceptable authorization to abandon the combined Total Daily Entitlement of CG&E and Union Light by 119,290 dt per day in Applicant's Rate Zone 3. It is indicated that CG&E and Union Light have notified Applicant of their intent to reduce their combined Total Daily Entitlement with Applicant by 119,290 dt per day in Applicant's Rate Zone 3 effective as of November 1, 1987. It is further indicated that CG&E and Union Light would replace entitlements with Applicant with quantities from Tennessee, commencing November 1, 1987. Applicant states that Tennessee has filed an application in Docket No. CP87-370-000 to sell to CG&E and Union Light a total of 150,000 dt per day effective November 1, 1987.

*Comment date:* November 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

#### 6. El Paso Natural Gas Company and Sunterra Gas Gathering Company

[Docket No. CP68-356-009, and Docket No. G-7670-003]

October 15, 1987.

Take notice that on October 5, 1987, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas, 79978 filed in Docket No. CP68-356-009, and Sunterra Gas Gathering Company (Sunterra), (jointly Petitioners) P.O. Box 26400, Albuquerque, New Mexico, 87125 filed in Docket No. G-7670-003 a joint petition to amend the order issued September 19, 1968, in Docket Nos. CP68-356 and G-7670 pursuant to section 7(c) of the Natural Gas Act to authorize certain changes to Petitioners' Gas Purchase Agreement dated May 1, 1975, as amended (Agreement), specifically (1) the addition of four existing interconnections of Petitioners' facilities as balancing points, (2) the exchange and balancing of natural gas on an MMBtu basis and (3) expanded blanket authorization for Petitioners to add and delete gas wells to the Agreement, all as more fully set forth in the joint petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that the September 19, 1968, order authorized them to exchange gas pursuant to the Agreement on an Mcf measurement basis and further provided El Paso blanket authorization to add natural gas wells to the exchange, subject to certain annual reporting requirements.

Petitioners assert that a review of the Agreement, in light of today's gas market, indicates the need for certain changes in the Agreement to make the exchange more efficient under present operating conditions. To that end,

Petitioners state that they have entered into a Supplemental Agreement dated August 15, 1987, which provides for (1) four exchange balancing points at existing interconnections of Petitioners facilities in Valencia, McKinley and San Juan Counties in New Mexico, (2) an MMBtu measurement basis for the exchange and balancing of natural gas and (3) the addition and deletion of natural gas wells by Sunterra and the deletion of gas wells by El Paso. Petitioners assert that they would make appropriate annual filings reflecting all additions and deletions of gas wells during the preceding year.

*Comment date:* November 5, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

#### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.6.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-24413 Filed 10-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8150-001, et al.]

#### Burr Courtright, et al.; Surrender of Preliminary Permits

October 15, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

##### 1. Burr Courtright

[Project No. 8150-001]

Take notice that Burr Courtright, exemptee for the proposed Chamberlin Ditch Pipeline Company Project, has requested that his conduit exemption from licensing be terminated. The conduit exemption was issued on February 9, 1987. The project would have been located on Bear Creek near the town of Wallowa, in Wallowa County, Oregon. The exemptee states that no construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on September 8, 1987.

##### 2. Burr Courtright

[Project No. 8151-001]

Take notice that Burr Courtright, exemptee for the proposed Clearwater Ditch and Chamberlin Pipeline Project, has requested that his conduit exemption from licensing be terminated. The conduit exemption was issued on February 9, 1987. The project would have been located on Bear Creek near the town of Wallowa, in Wallowa County, Oregon. The exemptee states



that no construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on September 8, 1987.

### 3. Resources I, Inc.

[Project No. 7452-002]

Take notice that Resources I, Inc., exemptee for the Clear Creek Project No. 7452, has requested that its exemption from licensing be terminated. The exemption from licensing was issued September 27, 1985. The project would have been located on Clear Creek in Baker County, Oregon, within Wallowa-Whitman National Forest. No construction has been initiated at the project site.

The exemptee filed the request on July 6, 1987.

### 4. Delmer Wagner

[Project No. 7294-003]

Take notice that Delmer Wagner, exemptee for the North Fork Project, has requested that his exemption be terminated. The order granting exemption was issued on December 28, 1984. The project would have been located on the North Fork Rogue River near the town of Prospect, in Jackson County, Oregon. Applicant states that project construction has not been initiated.

The exemptee filed the request on August 18, 1987.

### Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-24414 Filed 10-20-87; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. QF86-902-001, et al.]

### McKee Products, Inc. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

*Comment date:* Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.  
October 14, 1987.

Take notice that the following filings have been made with the Commission.

### 1. McKee Products, Incorporated

[Docket No. QF86-902-001]

On September 30, 1987, McKee Products, Incorporated (Applicant), of 6200 Upton Blvd., NE., Suite 400, P.O. Box 27019, Albuquerque, New Mexico 87125, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 500 kW small power production facility will be located in Newberry Springs, California. Crushed stone from the Newberry Springs Quarry is reclaimed from a stockpile and transported approximately two miles, descending eight hundred feet on eight belt conveyors to a stockpile at a railcar loading site. Seven of the eight conveyors transport the material downhill and produce electrical power. The conveyors are initially activated by squirrel cage induction motors. As the material is placed on the downhill belts, the gravitational force on the load produces potential energy that overtakes the motors and begins to drive the motors. As this occurs the motors become generators and produce electric power. The facility commenced operation in April 1987.

### 2. Garden State Energy Associates

[Docket No. QF87-678-000]

On September 24, 1987, Garden State Energy Associates, a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Rt. 130, Logan Township, New Jersey. The facility will consist of a combustion turbine generator, a heat recovery steam generator and an extraction steam turbine generator in combined-cycle. Thermal energy recovered by the facility will be used by the National Energetics Company in the production of carbon dioxide. The primary energy source for the facility will be coal and natural gas. The net electric power production capacity of the facility will be 155 MW. Installation is expected to begin to July 1989.

### Cogen Technologies NJ Venture (Phase II & Phase III)

[Docket No. QF86-972-001]

On September 22, 1987, Cogen Technologies NJ Venture (Applicant), of 1600 Smith Street, Suite 5000, Houston, Texas 77002 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bayonne, New Jersey. The facility as originally certified (Docket No. QF86-972-000, 37 FERC ¶ 62,083 (1986)) was to consist of three combustion turbine generators, three heat recovery steam generators, and an extraction/condensing steam turbine generator with the total net electric power production capacity of 165,035 kW. The installation of the facility was to begin in October 1986.

The recertification is requested due to proposed expansion of the facility in two phases; Phase II, and Phase III. In Phase II a combustion turbine generator, a heat recovery steam generator and a back pressure steam turbine generator will be added. The total facility's net electric power production capacity in Phase II will be approximately 22,305 kW. In Phase III a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator will be added. The total net electric power production capacity of the facility in Phase III will be approximately 328,095 kW. Thermal energy recovered from the facility will be used for heating No. 6 fuel during the transfer from the barge or ship into the terminal pipeline system for storage in the plant's storage tank. In addition, thermal energy will be used for production, transfer, and storage of asphalt and heating of lubricating oil for transfer to nearby industrial plants. The primary energy source will be natural gas or fuel oil. Installation of Phase II and Phase III will commence in 1990 and 1992 respectively. All other facility's characteristics remain unchanged.

### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the



comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-24415 Filed 10-20-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3279-6]

### Agency Information Collection Activities Under Office of Management and Budget Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the *Federal Register* a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

#### SUPPLEMENTARY INFORMATION:

##### Office of Air and Radiation

**Title:** NSPS Recordkeeping and Reporting Requirements for Secondary Brass and Bronze Ingot Production Plant (Subpart M). (EPA ICR #1129). This is a renewal of an existing collection.

**Abstract:** Brass and bronze ingot production facilities must notify EPA of construction, of each modification, startup, shutdown, and malfunction in the operation of an affected facility. Results of performance tests must also be submitted upon startup, of each affected facility. Recurring compliance reports are not required under the standard. The States and/or EPA use the data to determine the ability of each plant to comply with the standard.

**Respondents:** Owners and Operators of Secondary Brass and Bronze Ingot Production Plants.

**Estimated annual burden:** 103 hours.

**Title:** NESHAP Information

Requirements for Vinyl Chloride (EPA ICA #186). This is a reinstatement of a previous clearance.

**Abstract:** Owners and Operators of regulated facilities must submit a notice of construction or modification, start-up, and results of initial compliance tests. Owners and operators must also maintain records of leaks detected by vinyl chloride monitors, vinyl chloride emissions are measured by continuous emission monitors, and operation parameters (pressure and temperature) of the PVC reactor. Facilities are also required to report within 10 days of each relief valve and/or manual vent discharge. The States and/or EPA use the data to ensure compliance with the standard, to target inspections, and, when necessary, as evidence in court.

**Respondents:** Ethylene Dichloride Plants, Vinyl Chloride Monomer Plants, and Polyvinyl Chloride (PVC) Plants.

**Estimated annual burden:** 11,704 hours.

Comments on the abstracts in this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency (EPA), (PM-223), 401 M Street SW., Washington, DC 20460;

and

Nicolas Garcia, Office of Management and Budget (OMB), 726 Jackson Place NW., (Rm. 3019), Washington, DC 20503.

Date: October 13, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-24335 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42104; FRL-3279-8]

### Nonylphenol; Testing Consent Agreement Development and Solicitation for Public Participation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's Office of Toxic Substances recommendation of nonylphenol (CAS No. 25154-52-3) for testing under section 4 of the Toxic Substance Control Act (TSCA). Based on the recommendations, EPA is considering developing a testing consent agreement order or a test rule for nonylphenol. Public Participation is solicited. For this purpose, a public meeting will be held October 27, 1987, to gather information regarding industrial products and uses of nonylphenol,

sources of release to the environment, chemical fate, human and environmental effects, and human exposure.

**DATES:** Submit written notice of interest to be designated an "interested party" by November 24, 1987. A public meeting will be held on October 27, 1987.

**ADDRESS:** Submit written notice of interest in being designated an "interested party" in triplicate identified by the document control number (OPTS-42104) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

#### FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202) 554-1414.

Persons interested in attending the public meeting should notify EPA by telephone on or before October 20, 1987.

**SUPPLEMENTARY INFORMATION:** EPA is issuing this notice to solicit public participation, and to gather information for determining whether to proceed with a test rule or develop a testing consent agreement for the chemical substance nonylphenol.

#### I. Background

Nonylphenol is a mixture of monoalkyl phenols, with mostly para-substitution; the side chains are isomeric branched nonyl-groups. The production volume of nonylphenol is expected to reach 165 million pounds by 1987. There are about 15 manufacturing companies in the U.S. that produce alkylphenol ethoxylate surfactants, using approximately 97.5 to 112.5 million pounds of nonylphenol. Its principal use has been as an intermediate in the production of nonionic ethoxylated surfactants, comprising approximately 70 percent of the total production. Nonylphenol ethoxylate is the dominant alkylphenol ethoxylate surfactant. Other uses as an intermediate include nonylphenol in the processing of phosphite antioxidants (15 percent); oil additives and synthetic lubricants (10 percent); polyvinyl chloride plasticizers, pharmaceuticals, and as corrosion inhibitors (5 percent).

The Testing Priority Committee (TPC) of the Office of Toxic Substances was established on February 27, 1986, for the primary purpose of coordinating the nomination of chemicals for testing by various EPA offices. The TPC-recommended chemicals were to be based either on special data development needs, or recommended in



an effort to coordinate extensive TSCA testing activities with those of other offices in EPA involved with testing programs. The TPC nominated nonylphenol on July 30, 1987, for testing consideration under TSCA based on its review of the available data (primarily from the Chemical Hazard Information Profile on nonylphenol) and as part of an intra- and interagency review with other EPA program offices and Federal agencies. Therefore, through TPC's recommendation of nonylphenol, EPA is investigating this chemical for data gaps and testing needs as identified from this review.

From its participation in the interagency review, EPA's Office of water Regulations and Standards has recommended acute testing of saltwater invertebrates, and chronic testing of saltwater and freshwater invertebrates, including benthic forms, and freshwater fish. EPA's Office of Solid Waste has commented on its concerns regarding nonylphenol and the potential of risk from environmental releases and exposures. In addition, the Food and Drug Administration (Bureau of Foods) has recommended that more information be provided on the chemical fate of nonylphenol, especially on how the parent compound relates to the ethoxylated forms.

## II. Identification of Interested Parties

In accordance with 40 CFR 790.28, the testing negotiation procedures are initiated by the publication of this **Federal Register** notice, in which EPA is requesting interested persons to notify the Agency in writing of their intent to participate towards the development of consent agreement. All individuals and groups who respond to this notice will be given the status of "interested parties", and will be afforded opportunities to participate in the negotiation process. There will not be any obligations incurred by individuals and groups designated "interested parties". The procedures for these negotiations are described in 40 CFR 790.22.

Individuals and groups desiring to have the status of "interested parties" in the development of negotiations of nonylphenol under TSCA section 4 should submit a written notice of this fact to the Agency at the address given above before November 24, 1987. The Agency is considering initiating the consent agreement process because EPA believes this process will lead to the development of necessary test data significantly earlier than through rulemaking. An industry group has approached EPA with a request to review proposals for environmental

effects testing of nonylphenol to be conducted later this year. EPA will examine these proposals in the context of a testing consent order. Should the Agency be unable to come to an agreement with interested parties for a testing consent order, a proposed test rule will be issued for any testing the Agency believes necessary for nonylphenol, as required under section 4 of TSCA.

## III. Public Meetings

A public meeting will be held to discuss the Agency's evaluation of testing needs for nonylphenol and industry's testing proposals on October 27, 1987 at 10 a.m. The meeting will be held in Room 103 of the Northeast Mall in EPA Headquarters, located at 401 M St., SW., Washington, DC. Persons wishing to attend this meeting, or subsequent public meetings on nonylphenol, should notify the EPA TSCA Assistance Office at the telephone number provided above by October 20, 1987.

## IV. Timetable for Negotiating Consent Agreements

In accordance with the procedures for the development of consent agreements in 40 CFR 790.22, a "target schedule" will be established for nonylphenol once a public meeting has been conducted to announce EPA's preliminary testing decisions. There is no statutory deadline for response from EPA to the TPC's recommendations for nonylphenol as is required for chemicals designated by the Interagency Testing Committee under TSCA section 4(e). However, the Agency plans to conduct nonylphenol negotiations in a timely manner.

Date: October 14, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-24336 Filed 10-20-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 13, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's

duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0194

Title: Section 74.21—Broadcasting emergency information

Action: Extension

Respondents: Business, including Small Business

Frequency of Response: On occasion  
Estimated Annual Burden: 2 Responses; 1 Hour.

Needs and Uses: Section 74.21 requires licensees of auxiliary broadcast stations to notify the FCC, as soon as practicable, when the station is operated in a manner other than that for which it is authorized, giving the nature of the emergency and the use being made of the facility, and also subsequently notify the FCC when the emergency operation has terminated. The data is used by the Commission to evaluate the emergency and the need for such operations.

OMB No.: 3060-0313

Title: Section 76.205—Origination cablecasts by candidates for public office

Action: Extension

Respondents: Business, including Small Business

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 1,204 Recordkeepers; 1,505 Hours.

Needs and Uses: Section 76.205 requires cable television system operators to keep a complete record (political file) of all requests for cablecast time by candidates for public office, and the disposition of such requests. The data is used by these candidates to determine the use being made of these facilities by their opponents as a basis for equal opportunity requests.

OMB No.: 3060-0315

Title: Section 76.221—Sponsorship identification; list retention; related requirements

Action: Extension

Respondents: Business, including Small Business

Frequency of Response: Recordkeeping requirement



**Estimated Annual Burden: 420**

Recordkeepers; 210 Hours.

**Needs and Uses:** Section 76.221 requires that when a cablecast is of a political or controversial nature, the system operator maintain a list of the sponsor's chief executive officers, or members of the executive committee or board of directors; or the name, address and telephone number of each individual sponsor or advertiser when sponsorship announcement is omitted. The data is used by the public to acquire information not included in the cablecast.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24376 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-24377 Filed 10-20-87; 8:45 am]

BILLING CODE 6712-01-M

**FEDERAL HOME LOAN BANK BOARD****Appointment of Receiver; First California Savings Bank, Orange, CA**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(1982), the Federal Savings and Loan Insurance Corporation as sole receiver for First California Savings Bank, Orange, California, on October 15, 1987.

Dated: October 16, 1987.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-24327 Filed 10-20-87; 8:45 am]

BILLING CODE 6720-01-M

**FEDERAL MARITIME COMMISSION****Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224 200045.

Title: Port of Houston Authority

Terminal Lease.

Parties:

Port of Houston Authority  
Houston Transmodal Owning  
Company, L.P.

Synopsis: The proposed agreement provides the Houston Transmodal Owning Company, L.P. with a lease of a 126 acre waterfront tract for the operation of a semi-automated terminal facility giving preferential berthing rights to the lessee and providing that the Port Authority construct a transit

shed on the premises. The term of the lease begins with a three year construction term, a thirty year primary term and two renewal terms totaling twenty-five years.

Agreement No.: 224-200046.

Title: The Port of New Orleans Terminal Agreement.

Parties:

Board of Commissioners  
The Port of New Orleans  
Delta Petroleum Company, Inc.

Synopsis: The proposed agreement provides the Delta Petroleum Company, Inc., with a one year lease of the Thalia Street Wharf, shed only, Sections 1 through 43, for the use of storing of finished refined motor oils and lubricating oils for domestic distributing or export.

Agreement No.: 224-010690-001.

Title: Permit No. 552 Crane Lease Agreement.

Parties:

The City of Los Angeles (City)  
Mitsui O.S.K. Lines, Ltd. (Mitsui)

Synopsis: The proposed agreement modifies the basic lease agreement (Permit No. 552) to (1) provide that Mitsui may lease container cranes at its terminal rather than purchase them, and (2) give the City an option to buy the cranes when Mitsui leaves the terminal.

Joseph C. Polking,

Secretary.

Dated: October 16, 1987.

[FR Doc. 87-24350 Filed 10-20-87; 8:45 am]

BILLING CODE 6730-01-M

**Survey of Ports and Marine Terminal Operators**

The Federal Maritime Commission recently sent surveys to ports and marine terminal operators seeking their views as to the impact of the U.S. Shipping Act of 1984. The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, and is the second in a series to be distributed on an annual basis through 1989.

The Commission has been directed by the U.S. Congress to "collect and analyze information concerning the impact of this Act upon the international shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the Act.

The Commission would like its survey to have the widest possible distribution. All interested ports and marine terminal operators who have not received a copy

**Allocations Subgroup of Radio Advisory Committee; Meeting**

The Allocations Subgroup of the Advisory Committee on Radio Broadcasting will meet at 1:30 p.m., Monday October 26, 1987, at the offices of Wiley, Rein and Fielding, twelfth floor, 1776 K Street, NW., Washington DC, to consider the following matters:

(1) The development of recommendations to the FCC on updating the stated allocations objectives of the radio broadcast service, the priorities among those objectives, and possible differentiations between the objectives of the AM and FM components of the radio broadcast service, and between the uses of the established 535-1605 kHz portion of the AM band and the prospective 1605-1705 kHz portion;

(2) Input to the Technical Subgroup of the Radio Advisory Committee concerning the possible desirability of amendment of the FCC AM Rules relating to:

(a) AM groundwave and skywave field strength contours that should normally be protected against interference; and

(b) Protection ratios; and  
(c) Additional assignment considerations to increase flexibility;

(3) Preparations for the 1988

Conference to expand the AM band; and  
(4) Other business.

Subgroup meetings are continuing ones, and may be resumed after the October 26, 1987 session at such times and places as may be decided then. All Subgroup meetings are open to the public, and all interested persons are invited to participate in them.

For further information, please call the Subgroup Chairman: Louis C. Stephens, (202) 254-3394.



of the survey are urged to contact:  
Robert M. Blair, Bureau of Economic  
Analysis, Federal Maritime Commission,  
1100 L Street, NW., Washington, DC  
20573, Tel. (202) 523-6761.

Joseph C. Polking,  
Secretary.

Dated: October 16, 1987.

[FR Doc. 87-24351 Filed 10-20-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under OMB Review

October 15, 1987.

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATE:** Comments must be received by November 5, 1987.

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance  
Officer Nancy Steele, Division of  
Research and Statistics, Board of  
Governors of the Federal Reserve  
System, Washington, DC 20551 (202-  
452-3822).

#### Proposal To Approve Under OMB Delegated Authority The Extension Without Revision of the Following Reports

1. *Report title:* Monthly Survey of  
Selected Deposits and Other Accounts  
*Agency form number:* FR 2042  
*OMB Docket number:* 7100-0066  
*Frequency:* Monthly

*Reporters:* Commercial banks, mutual  
savings banks, and FDIC insured  
Federal savings banks

*Annual reporting hours:* 21,921

Small businesses are affected.

*General description of report:*

This information collection is voluntary  
(12 U.S.C. 248(a)(2)) and is given  
confidential treatment (5 U.S.C.  
552(b)(4)).

These data, which are collected from  
a sample of commercial banks, mutual  
savings banks, and FDIC-insured federal  
savings banks, are used by the Federal  
Reserve to analyze and interpret  
movements in the monetary aggregates,  
observe competitive developments  
between banks and thrift institutions,  
and help monitor the earnings position  
of banks and thrifts.

2. *Report title:* Quarterly Survey of  
Number of Selected Deposit Accounts  
*Agency form number:* FR 2071a and FR  
2071 a-n

*OMB Docket number:* 7100-0028

*Frequency:* Quarterly

*Reporters:* Commercial banks

*Annual reporting hours:* 675

Small businesses are affected.

*General description of report:*

This information collection is  
voluntary (5 U.S.C. 248(a)) and is given  
confidential treatment (5 U.S.C.  
552(b)(4)).

This report provides information on  
the number of MMDA and NOW

accounts. Movements in the average  
size of these accounts are used in  
analyzing the behavior of the monetary  
aggregates.

Board of Governors of the Federal Reserve  
System, October 15, 1987.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 87-24421 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has  
applied under the Change in Bank  
Control Act (12 U.S.C. 1817(j)) and  
section 225.41 of the Board's Regulation  
Y (12 CFR 225.41) to acquire a bank or  
bank holding company. The factors that  
are considered in acting on notices are  
set forth in paragraph 7 of the Act (12  
U.S.C. 1817(j)(7)).

The notices are available for  
immediate inspection at the Federal  
Reserve Bank indicated. Once the  
notices have been accepted for  
processing, they will also be available  
for inspection at the offices of the Board  
of Governors. Interested persons may  
express their views in writing to the  
Reserve Bank indicated for that notice  
or to the offices of the Board of  
Governors. Comments must be received  
not later than November 5, 1987.

**A. Federal Reserve Bank of San  
Francisco** (Harry W. Green, Vice  
President) 101 Market Street, San  
Francisco, California 94105:

1. *Donald B. Murphy*, Tacoma,  
Washington; to acquire an additional  
17.3 percent of the voting shares of  
Washington Independent Bancshares,  
Inc., Marysville, Washington, and  
thereby indirectly acquire Central  
Valley Bank, N.A., Toppenish,  
Washington.

Board of Governors of the Federal Reserve  
System, October 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24424 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

### Eastland Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice  
have applied for the Board's approval  
under section 3 of the Bank Holding  
Company Act (12 U.S.C. 1842) and  
§ 225.14 of the Board's Regulation Y (12  
CFR 225.14) to become a bank holding  
company or to acquire a bank or bank



holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 13, 1987.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Eastland Financial Corp.*, Woonsocket, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Eastland Savings Bank, Woonsocket, Rhode Island, and Eastland Bank, Woonsocket, Rhode Island. Comments on this application must be received by November 6, 1987.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with UNB Corporation, Fayetteville, Tennessee, and thereby indirectly acquire Union National Bank, Fayetteville, Tennessee.

2. *First Security Bancorp, Inc.*, Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank of Maryland, Baltimore, Maryland, the successor by merger to Federal Savings Bank of Maryland.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation*, Zeeland, Michigan; to acquire 100 percent of the voting shares of The Reed City State Bank, Reed City, Michigan.

2. *Security Chicago Corp.*, Chicago, Illinois; to acquire 15 percent of the voting shares of Oswego Bancshares, Inc., Oswego, Illinois.

**D. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Polk County Banco, Inc.*, Balsam Lake, Wisconsin; to acquire 15 percent of the voting shares of Stanley Bancorporation, Inc., Stanley, Wisconsin, and thereby indirectly acquire Farmers & Merchants State Bank, Stanley, Wisconsin.

2. *St. Croix Banco, Inc.*, New Richmond, Wisconsin; to acquire 80 percent of the voting shares of Stanley Bancorporation, Inc., Stanley, Wisconsin, and thereby indirectly acquire Farmers & Merchants State Bank, Stanley, Wisconsin.

Board of Governors of the Federal Reserve System, October 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24422 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

### Home National Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 1987.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home National Corporation*, Milford, Massachusetts; to engage *de novo* through its subsidiary, Home National Financial Services Corporation, Milford, Massachusetts, in tax planning and preparation pursuant to § 225.25(b)(21); providing management consulting advice to depository institutions pursuant to § 225.25(b)(11); and consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y. These activities will be conducted in the State of Massachusetts.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Shorebank Corporation*, formerly Illinois Neighborhood Development Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Shorebank Advisory Services, Inc., in making equity and debt investments in corporations of projects designed to promote community welfare pursuant to § 225.25(b)(6); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24423 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0603]

### Final Guidelines Regarding Bank Bribery Act

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final guidelines.

**SUMMARY:** The Bank Bribery Amendments Act of 1985 required that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The guidelines were developed by the



Interagency Bank Fraud Enforcement Working Group, were submitted to the Federal Financial Institutions Examination Council for its consideration and submission to each of the Federal financial institutions regulatory agencies, and, upon review of public comments, were approved by the Board of Governors. The final guidelines encourage all State member banks and bank holding companies to adopt codes of conduct or written policies that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board of Governors, do not constitute violations of the Federal bank bribery law. In addition, the final guidelines suggest, *inter alia*, that State member banks and bank holding companies themselves establish, in their own codes of conduct or written policies, a range of internally acceptable dollar amounts for the various benefits that their officials may receive from those doing or seeking to do business with them.

**EFFECTIVE DATE:** October 21, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Herbert A. Biern, Assistant Director, Enforcement Section, Division of Banking Supervision and Regulation (202/452-2620), Board of Governors of the Federal Reserve System, Washington, DC. 20551.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473, Title 11, October 12, 1984) amended the Federal bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. (The definition of a "financial institution" under the law includes a bank and a bank holding company.) The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of

fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that does not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99-370, August 4, 1986) to narrow the scope of 18 U.S.C. 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, section 215 provides in pertinent part:

Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense]

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in subsection 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds \$100, the offense is a felony punishable by up to five years imprisonment and a fine of \$5,000 or three times the value of the bribe or gratuity. If value does not exceed \$100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of \$1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set

forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes do not undermine the duty of an employee, officer, director, agent or attorney of the financial institution. *United States Attorneys' Manual* section 9-40.439.

**Final Guidelines**

The final guidelines encourage all State member banks and bank holding companies to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies to include provisions that explain the general prohibitions of the bank bribery law. The guidelines relate only to the bribery law and do not address other areas of conduct that a State member bank or bank holding company would find advisable to cover in its code of conduct or written policy. Consistent with the intent of the statute to proscribe corrupt activity within financial institutions, the code or policy should prohibit any employee, officer, director, agent or attorney of a State member bank or bank holding company (hereinafter "Bank or Bank Holding Company Official" or "Bank or Bank Holding Company Officials") from (1) soliciting for themselves or for a third party (other than the bank or bank holding company itself) anything of value from anyone in return for any business, service or confidential information of the bank or bank holding company and from (2) accepting anything of value (other than bona fide salary, wages and fees as referred to in 18 U.S.C. 215(c)) from anyone in connection with the business of the bank or the bank holding company, either before or after a transaction is discussed or consummated.

The State member banks' and bank holding companies' codes or policies should be designed to alert Bank or Bank Holding Company Officials about the bank bribery statute, as well as to establish and enforce standards relating to acceptable business practices.

In its code of conduct or written policy, the State member bank or bank holding company may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank or bank holding company business. There are a number of instances where a Bank or Bank Holding Company Official, without risk of corruption or breach of trust, may accept something of value from one



doing or seeking to do business with the bank or bank holding company. The most common examples are the business luncheon or the holiday season gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Bank or Bank Holding Company Official; or if the benefit would be paid for by the bank or bank holding company as a reasonable business expense if not paid for by another party. Indeed, by adopting a code of conduct or written policy with appropriate allowances for such circumstances, a State member bank or bank holding company recognizes that acceptance of certain benefits by its Bank or Bank Holding Company Officials does not amount to a corrupting influence on the bank's or bank holding company's transactions.

In issuing guidance under the statute in the area of business purpose entertainment or gifts, it is not advisable for the Board of Governors to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A State member bank or bank holding company should seek to embody the highest ethical standards in its code of conduct or written policy. In doing this, a State member bank or bank holding company may establish in its own code or policy a range of dollar values which cover the various benefits that its Bank or Bank Holding Company Officials may receive from those doing or seeking to do business with the bank or bank holding company.

The code of conduct or written policy should provide that, if a Bank or Bank Holding Company Official is offered or receives something of value beyond what is authorized in the bank's or bank holding company's code of conduct or written policy, the Bank or Bank Holding Company Official must disclose that fact to an appropriately designated official of the financial institution. The State member bank or bank holding company should keep contemporaneous written reports of such disclosures. An effective reporting and review mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the bank or bank holding company to better protect itself from self-dealing. However, a Bank or Bank Holding Company Official's full

disclosure evidences good faith when such disclosure is made in the context of properly exercised supervision and control. Management should review the disclosures and determine that what is accepted is reasonable and does not pose a threat to the integrity of the State member bank or bank holding company. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts.

The Board of Governors recognizes that a serious threat to the integrity of a State member bank or bank holding company occurs when its Bank or Bank Holding Company Officials become involved in outside business interests or employment that gives rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, State member banks and bank holding companies are encouraged to prohibit, in their codes of conduct or policies, their Bank or Bank Holding Company Officials from self-dealing or otherwise trading on their positions with the bank or bank holding company or accepting from one doing or seeking to do business with the bank or bank holding company a business opportunity not available to other persons or that is made available because of such official's position with the State member bank or bank holding company. In this regard, a State member bank's or bank holding company's code of conduct or policy should require that its Bank or Bank Holding Company Officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed due to either business or personal relationships with customers, suppliers, business associates, or competitors of the bank or bank holding company.

#### Exceptions

In its code of conduct or written policy, a State member bank or bank holding company may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with bank or bank holding company business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Bank or Bank Holding Company Official) where the circumstances make it clear that it is those relationships rather than the business of the bank or bank holding company concerned which are the motivating factor;

(b) Permit acceptance of meals, refreshments, travel arrangements or accommodations, or entertainment, all of reasonable value and in the course of a meeting or other occasion the purpose of which is to hold bona fide business discussions, provided that the expenses would be paid for by the State member bank or bank holding company as a reasonable business expense, if not paid for by another party (the bank or bank holding company may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of Bank or Bank Holding Company Officials, such as home mortgage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of reasonable value, such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Permit acceptance of gifts of reasonable value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas or bar or bat mitzvah (the bank or bank holding company may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the bank or bank holding company may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case by case basis, a State member bank or bank holding company may approve of other circumstances, not identified above, in which a Bank or Bank Holding Company Official accepts something of value in connection with bank or bank holding company business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

#### Disclosures and Reports

To make effective use of these guidelines, the Board of Governors recommends the following additional procedures:

(a) The State member bank or bank holding company should maintain a copy of any code of conduct or written policy it establishes for its Bank or Bank



Holding Company Officials, including any modifications thereof.

(b) The State member bank or bank holding company should require an initial written acknowledgement of its code or policy and a written acknowledgement of any subsequent material changes to the code or policy from its Bank or Bank Holding Company Officials and the Bank or Bank Holding Company Officials' agreement to comply therewith.

(c) The State member bank or bank holding company should maintain contemporaneous written reports of any disclosures made by its Bank or Bank Holding Company Officials in connection with a code of conduct or written policy.

Board of Governors of the Federal Reserve System, October 15, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-24285 Filed 10-20-87; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### Agency Information Collection Activities Under OMB Review

GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget to reauthorize expired report 3090-0035, Bidder's Mailing List Application Code Sheet (GSA Form 3038).

**AGENCY:** Procurement Management Division, GSA.

**ADDRESSES:** Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Rosa McCullough, 703-557-0282.

**Purpose:** Firms that plan to bid on Government supply contracts fill out GSA Form 3038 so they will be notified when the Government wants bids submitted for items it needs.

**Annual Reporting Burden:** Respondents and responses, 8,250; average time to fill our form, ½ hour; burden hours, 4,125.

**Copy of Proposal:** Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning 202-566-0668.

Dated: October 9, 1987.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 87-24340 Filed 10-20-87; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse and Mental Health Administration

#### Advisory Committee Meetings

**AGENCY:** Alcohol, Drug Abuse and Mental Health Administration, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees in the month of November 1987. These committees will be open for discussion of administrative announcements and program developments. The Committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

**Committee Name:** Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

**Date and Time:** November 2-4: 9:00 a.m.

**Place:** Bethesda Holiday Inn, Pennsylvania Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

**Status of Meeting:** Open—November 2: 9:00-9:30 a.m. Closed—Otherwise.

**Contact:** Ronald F. Suddendorf, Room 16C26, Parklawn Building 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6106.

**Purpose:** The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

**Committee Name:** Psychopathology and Clinical Biology Research Review Committee, NIMH.

**Date and Time:** November 2-4: 9:00 a.m.

**Place:** Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

**Status of Meeting:** Open—November 2: 9:00-10:00 a.m. Closed—Otherwise.

**Contact:** Emilie A. Embrey, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1340.

**Purpose:** The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

**Committee Name:** Small Business Innovation Research Review Committee, NIMH.

**Date and Time:** November 3-4: 9:00 a.m.

**Place:** Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

**Status of Meeting:** Open—November 3: 9:00-10:00 a.m. Closed—Otherwise.

**Contact:** Bonnie Dwyer, Room 9C15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

**Purpose:** The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research from small business that focus on mental health topics within the mission of NIMH, with recommendations to the National Advisory Mental Health Council for final review.

**Committee Name:** Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

**Date and Time:** November 5-6: 9:00 a.m.

**Place:** Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

**Status of Meeting:** Open—November 5: 9:00-10:00 a.m. Closed—Otherwise.

**Contact:** Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

**Purpose:** The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

**Committee Name:** Epidemiology Subcommittee of the Epidemiologic and



Services Research Review Committee, NIMH.

**Date and Time:** November 9-11: 9:00 a.m.

**Place:** Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

**Status of Meeting:** Open-November 9: 9:00-10:00 a.m.; Closed-Otherwise.

**Contact:** Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1367.

**Purpose:** The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

**Committee Name:** Mental Health Small Grant Review Committee, NIMH.

**Date and Time:** November 30-December 1: 9:30 a.m.

**Place:** Holiday Inn, Rhode Island Avenue at 17th St., N.W., Washington, DC 20036.

**Status of Meeting:** Open-November 30: 9:30-10:30; Closed-Otherwise.

**Contact:** Monica Woodfork, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

**Purpose:** The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443-4375. NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9-94, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

**Date:** October 15, 1987.

**Peggy W. Cockrill,**

*Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 87-24362 Filed 10-20-87; 8:45 am]

BILLING CODE 4160-20-M

## Food and Drug Administration

[Docket No. 87N-0270]

### Studies for Developing Procedures To Evaluate the Safety of Bound Drug Residues; Availability of Grants (Cooperative Agreement); Request for Applications

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the anticipated availability of approximately \$300,000 for Fiscal Year 1988 for cooperative agreements to support studies for developing procedures to evaluate the safety of drug residues that are bound to tissues of food-producing animals. Funds are not currently available for these studies. Accordingly, the government's obligation under this program is contingent upon the availability of appropriated funds from which cooperative agreements will be funded. The purpose of these agreements will be to provide financial assistance to support research on new models, procedures, or combinations of models and procedures that can contribute to a general approach to evaluating the safety of bound drug residues. FDA anticipates making up to three awards. Support for this program may be for a period of up to 3 years.

**DATE:** Applications must be received by January 19, 1988. The earliest date for award is July 1, 1988.

**ADDRESSES:** Applications should be submitted to and applications are available from: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170. NOTE: Applications hand carried or commercially delivered should be addressed to Park Bldg., Rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

#### FOR FURTHER INFORMATION CONTACT:

For further information regarding the administrative and financial management aspects of this notice contact: Barbara Moy, address above.

For further information regarding the programmatic aspects of this notice contact: David B. Batson, Center for Veterinary Medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rm. 8-89, Rockville, MD 20857, 301-443-6510.

**SUPPLEMENTARY INFORMATION:** FDA's authority to fund research projects is set out in section 301 of the Public Health

Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95-224. FDA's research program is described in the catalog of Federal Domestic Assistance No. 13.103.

#### I. Background

Section 512(d)(2) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360b(d)(2)) states that "In determining whether such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, the Secretary shall consider, among other relevant factors, (A) the probable consumption of such drug and of any substance formed in or on food because of the use of such drug, (B) the cumulative effect on man or animal of such drug, taking into account any chemically or pharmacologically related substance \* \* \*." Since the early 1970's, the agency has interpreted this section to mean that the safety must be demonstrated, not only of a drug administered to a food-producing animal, but also of any metabolic transformation products that are likely to remain in the edible tissues of such animals. Because of the increased sensitivity achieved using radioisotopically labeled drugs compared to that afforded by chemical analysis, the agency has generally recommended that radiolabeled compounds be used by sponsors to conduct metabolism and total residue depletion studies with candidate drugs intended for use in food-producing animals.

There are several special considerations that must be taken into account when using radionuclides in these types of studies. One of these occurs when target animal metabolism of the drug results in the release of small molecules containing the radioactive atom. For example, if one or two carbon radiolabeled fragments are formed, they will enter metabolic pools that exist for such compounds and thereby become incorporated into endogenous macromolecules of no toxicological significance (Refs. 1 and 2).

A second consideration arises when an administered drug, or more likely, one or more of its radiolabeled metabolites, forms a covalent bond to various tissue constituents in the target animal. Radiolabeled residues resulting from the latter process may be of toxicological concern (Refs. 3 and 4). For example, reactive metabolites that are covalently bound to tissue protein in food-producing animals may be released as a part of much smaller molecules when the alkylated protein is consumed and digested by a second species.



Unlike the original macromolecule, some amino acid "adducts" of this type have been shown to be readily bioavailable (Ref. 5) and to possess biological activity in the second species (Ref. 6).

Also, an enzyme that is capable of regenerating a reactive drug metabolite from its adduct with certain amino acids has been shown to exist in rat liver (Ref. 7). For these reasons, the agency has insisted that bound radioactive residues be included under the tolerance or safe level of residues established for an animal drug, in the absence of information demonstrating the safety of such residues.

Both types of metabolic processes described above result in radioactive residues being detected in the tissues of animals for long periods of time following administration of a sample of radiolabeled drug. Furthermore, because the radioactivity is associated with macromolecular cellular constituents, it is not readily extractable from tissue with organic solvents normally used to isolate drug residues. The difficulty in extracting these "bound residues" from tissues without altering their structure makes it extremely difficult to isolate and identify them. It also hinders efforts to evaluate their toxicity, although one or two Herculean attempts to accomplish a toxicological evaluation of bound residues have been made by sponsors of candidate animal drugs (Ref. 8).

For several reasons, the problems presented by bound residues are especially acute for carcinogenic animal drugs. On one hand, the alkylating properties of most ultimate carcinogenic molecules are likely to result in relatively high levels of bound residues in tissue. At the same time, the maximum acceptable risk levels for residues of carcinogenic animal drugs are normally quite low, i.e., in the part per billion range. These two facts have combined to present a major obstacle to the approval of new animal drug applications for several carcinogenic animal drugs, for which an unreasonably long withdrawal period was required, and/or an analytical method of sufficient sensitivity for residues could not be developed.

Because the agency will remove from consideration under a tolerance any residues that have been shown to be safe, sponsors of candidate drugs for use in food-producing animals have been active in developing techniques to demonstrate that lack of toxicological concern for bound residues that occur with their individual drugs. The suggested techniques include relay toxicity feeding studies, short-term, in vitro toxicity tests, procedures to

indicate the lack of bioavailability of bound residues (Gallo-Torres procedure) (Ref. 9), demonstration of the presence of radiolabeled amino acids or other natural cell constituents of no toxicological concern, and model systems designed to reveal the potential toxicity of various types of covalently-bound drug residues (Ref. 10).

Applicants are advised to consult the series of papers presented at a June 16 and 17, 1976, "Symposium on Drug Metabolism and Residues in Food-Producing Animals" (Ref. 11) and a review written by Weber (Ref. 12) for a more detailed discussion of the problems presented by bound residues and of the procedures that have been developed to address the issue.

Although researchers can sometimes demonstrate that a portion of the persistent radioactivity in edible tissues has arisen from the incorporation of radioactive atoms into endogenous molecules, or that a portion of the bound residues in an edible tissue are not bioavailable, the currently available techniques are expensive and time consuming to conduct. Furthermore, when the administered drug is known to be carcinogenic, even a small fraction of the residues in edible tissues must be considered as toxicologically significant. In these cases, the qualitative nature and other limitations of the studies discussed above prevent agency scientists from using them to disregard bound residues above levels shown to be safe.

## II. Research Goals and Objectives

The specific goals for these cooperative agreements will be to provide financial assistance to investigators conducting research on new models, procedures, or combinations of models and procedures that can contribute to a general approach to evaluating the safety of bound drug residues. Compounds that are known to form covalent bonds, by various mechanisms, to tissue components should be selected as model compounds for the proposed studies. Techniques dealing with the identification or isolation of sufficient quantities of bound residues for toxicological testing and in vitro approaches to the toxicological evaluation of bound residues will also be considered for support under this program. The agency is most interested in complete strategies that will have broad application to the bound residue problems encountered with several classes of animal drugs but will give consideration to proposals addressing significant segments of the problem.

## III. References

The following references have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Rosenblum, C., "Nonmetabolite Residues in Radioactive Tracer Studies," in "Isotopes in Experimental Pharmacology," L. J. Roth (Ed.), p. 353, University of Chicago Press, 1965.
2. Schach von Wittenau, M., "Long Term Residues Arising From  $^{14}\text{CO}_2$  Fixation in Swine Tissue," *Journal of Science of Food and Agriculture*, 18:608-609, 1967.
3. Mulder, G. J., J. A. Hinson, and J. R. Gillette, "Generation of Reactive Metabolites of *n*-Hydroxy-phenacetin by Glucuronidation and Sulfation," *Biochemical Pharmacology*, 26:189-196, 1977.
4. Ranug, U., A. Sundvall, and C. Ramel, "The Mutagenic Effect of 1,2-Dichloroethane on *Salmonella typhimurium*, I. Activation Through Conjugation with Glutathione In Vitro," *Chemico-Biological Interactions*, 20:1-16, 1978.
5. Feung, C. S., R. O. Mumma, and R. H. Hamilton, "Metabolism of 2,4-Dichlorophenoxyacetic Acid, VI. Biological Properties of Amino Acid Conjugates," *Journal of Agriculture and Food Chemistry*, 22:307-309, 1974.
6. Dorough, H. W., "Metabolism of Carbamate Insecticides," EPA/600 1-77-012, Government Printing Office, Washington, DC, pp. 197-225, 1977.
7. Tateishi, M., S. Suzuki, and H. Shimizu, "Cysteine Conjugate Beta-lyase in Rat Liver," *Journal of Biological Chemistry*, 225:8854-8859, 1978.
8. Wislocki, P. G., E. S. Bagan, M. M. Cook, M. O. Bradley, F. J. Wold, and A. Y. H. Lu, "Drug Residue Formation from Ronidazole, a 5-Nitroimidazole, VI. Lack of Mutagenic Activity of Reduced Metabolites and Derivatives of Ronidazole," *Chemico-Biological Interactions*, 49:27-38, 1984.
9. H. E. Gallo-Torres, "Methodology for the Determination of Bioavailability of Labeled Residues," *Journal of Toxicology and Environmental Health*, 2:827-845, 1977.
10. Schaeffer, V. H., and J. L. Stevens, "The Transport of S-Cysteine Conjugates in LLC-PK Cells and Its Role in Toxicity," *Molecular Pharmacology*, 31:506-512, 1987.
11. Symposium on Drug Metabolism and Residues in Food-Producing Animals, Brunton, J., L. Davis, and W.



Huber, (Eds.), *Journal of Toxicology and Environmental Health*, 2:727-915, 1977.

12. Weber, N. E., "Persistent Residues: Interface with Regulatory Decisions," *Journal of Environmental Pathology and Toxicology*, 3:35-43, 1980.

#### IV. Reporting Requirements

The program progress reports and financial status reports (SF-269) will be required semi-annually based on date of award. These reports will be due within 30 days after the last day of each semi-annual period. (CVM Program Staff shall advise the grantee of the suggested format at the appropriate time.) A final invention statement, program progress report, and financial status report will be due 90 days after the expiration of the project period of the cooperative agreement.

#### V. Mechanism of Support

##### A. Award Instrument

Support for this program will be in the form of cooperative agreement awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provision of 42 CFR Part 52 and 45 CFR Part 74. The regulations promulgated under Executive Order 12372 do not apply to this program.

##### B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and to any for-profit organization. For-profit organizations must exclude fees or profit from their request for support.

##### C. Length of Support

The length of support will depend on the nature of the study and may extend beyond 1 year but not to exceed 3 years. For studies where the expected date of completion is more than 1 year, noncompetitive continuation of support beyond the first year will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

##### D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of funds.

#### VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the

projects funded under this request for applications (RFA). Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint project officers who will actively monitor the FDA-supported program under each award. During monitoring, FDA may direct or redirect the selection of the animal drugs to be studied.

2. FDA will establish a project advisory group that will provide guidance and direction to the program with regard to the animal drugs and animal tissues to be investigated. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used.

3. FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, and coauthorship of publications.

#### VII. Review Procedure and Criteria

##### A. Review Method

Applications will undergo initial review by experts in the field of drug toxicology and drug metabolism. The experts will review and evaluate each application based on its scientific merit. The applications will be subject to a second level review to evaluate them based on their relevance to FDA's mission in the regulation of animal drugs.

##### B. Review Criteria

Applications must be responsive to this RFA. Applications that are judged to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant. Applications will be reviewed according to the following criteria:

1. Responsiveness to RFA.
2. The request for financial support is adequately justified and fully documented.
3. Soundness of the rationale for the proposed study.
4. Appropriateness of the study design to answer the question posed.
5. Availability and adequacy of laboratory and associated animal facilities.
6. Availability and adequacy of support services, e.g., biostatistical, computer, etc.
7. Research experience, training, and competence of the principal investigator and support staff.

#### VIII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 9/86), with sufficient copies of all reprints critical to the review, should be delivered to Robert L. Robins, address above. The outside of the mailing package and the top of the application face page should be labeled "Response to RFA-FDA-CVM-88-1."

#### IX. Method of Application

##### A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date January 19, 1988.

Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legible dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

**Note.**—Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

##### B. Format for Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/86). The face page of the application must reflect the RFA number, RFA-FDA-CVM-88-1. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925-0001.

##### C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall



not be used or disclosed except for evaluation purposes.

Dated: September 22, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-24434 Filed 10-19-87; 11:24 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0354]

### Drug Export; Antihemophilic Factor (Human)

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that The New York Blood Center, Inc., has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human) to the Federal Republic of Germany.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs and biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs, including biological products, that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the *Federal Register* within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that The New York Blood Center, Inc., Box 5119, 155 Duryea Rd., Melville, NY 11747, has filed an application requesting approval

for the export of the biological product Antihemophilic Factor (Human) to the Federal Republic of Germany. This biological product is to be used to prevent hemorrhage in surgery resulting from various procedures in which bleeding may occur in hemophiliacs. The application was received and filed in the Center for Drugs and Biologics on July 7, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 2, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: October 7, 1987.

Sammie R. Young,

Acting, Director, Office of Compliance for Drugs and Biologics.

[FR Doc. 87-24286 Filed 10-20-87; 8:45 am]

BILLING CODE 4160-01-M

### Health Resources and Services Administration

#### Program Announcement for Grants for Establishment of Departments of Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of section 780 of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 780 authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing,

organizing, coordinating, and evaluating all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under section 786(a), Title VII, of the Public Health Service Act.

To be eligible to receive support for this grant program, the applicant must be a public of nonprofit private accredited school of medicine or osteopathy.

To receive support, programs must meet the requirements of final regulations as set forth in 42 CFR Part 57, Subpart R.

Section 780, as amended by Pub. L. 99-129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

The Administration's budget request for Fiscal Year 1988 includes \$5 million for this program. These funds are needed for noncompeting continuations. This notice regarding applications does not reflect any change in this policy. However, should additional funds for competing awards become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

#### Funding Preference

A funding preference will be given to applicants that (1) demonstrate a commitment to increased enrollment and retention of minority and disadvantaged students in their programs or show evidence of efforts to recruit minority and disadvantaged students; and (2) demonstrate the potential to continue the projects on a self-sustaining basis.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (D32),  
Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960

Questions regarding programmatic information should be directed to:

Division of Medicine, Multidisciplinary Resources Development Branch,  
Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane,



Room 4C-25, Rockville, Maryland 20857, Telephone: (301) 443-3614

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline date is December 14, 1987. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 28, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87-24364 Filed 10-20-87; 8:45 am]

BILLING CODE 4160-15-M

### Program Announcement for Nurse Anesthetist Traineeship Grants and Professional Nurse Traineeship Grants

The Health Resource and Services Administration announces that applications for Fiscal Year 1988 Nurse Anesthetist Traineeship and Professional Nurse Traineeship grants will be accepted under the authority of sections 831(a) and 830(a) of the Public Health Service Act, as amended.

The Administration's budget request for Fiscal Year 1988 does not include funding for these programs. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

#### Nurse Anesthetist Traineeships

Section 831(a) of the Public Health Service Act, as amended by Pub. L. 99-

92, the Nurse Education Amendments of 1985, authorizes grants for traineeships to prepare licensed, registered nurses to be nurse anesthetists in eligible nurse anesthetist programs.

#### Eligible Applicants

To be eligible to receive support, an applicant must be a public or private nonprofit institution which provides registered nurses with full-time nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools and must have currently enrolled full-time students who are registered nurses who are beyond the 12th month of study.

In determining the amount of the grant award, the Department will use a formula based on the number of approved applications and the number of full-time registered nurses who are beyond the 12th month of study.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance*.

#### Funding Preference

In determining the order of funding of applications which have been recommended for approval, preference will be given to applications which satisfactorily demonstrate a commitment to increased enrollment and retention of minority and financially needy students in their programs or show evidence of efforts to recruit minority and financially needy students. "Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black or Hispanic. "Financially needy" means a student has exceptional financial need. For purposes of this program a student will have exceptional financial need if the school determines that the student's resources do not exceed the lesser of \$5,000 or one-half of the cost of attendance at the school. Student summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will not be considered resources for purposes of determining whether a student has exceptional financial need. All eligible applications, however, will be reviewed and given consideration for funding.

#### Professional Nurse Traineeships

Section 830(a) of the Public Health Service Act, as amended by Pub. L. 99-92, the Nurse Education Amendments of 1985, authorizes grants for:

(1) Traineeships to prepare registered nurses in masters' degree and doctoral degree programs which educate such nurses to serve in and prepare for

practice as nurse practitioners, nurse administrators, nurse educators, nurse researchers, or other professional nursing specialties determined by the Secretary to require advanced education; and

(2) Traineeships to educate nurses to serve in and prepare for practice as nurse midwives.

#### Eligible Applicants

To be eligible to receive support an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in professional nursing specialties, or a public or nonprofit private school of nursing or entity which prepares registered nurses to practice as nurse midwives. The nurse midwife program must be approved by the American College of Nurse Midwives.

This program is listed at 13.358 in the *Catalog of Federal Domestic Assistance*.

#### Application Deadlines

Nurse Anesthetist Traineeships—November 23, 1987.

Professional Nurse Traineeships—November 23, 1987.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date or,

2. Postmarked on or before the deadline date and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

For specific guidelines and information regarding these programs contact:

Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-13, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6333

Questions regarding grants policy should be directed to:

Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6915

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplements for these programs have been approved by the Office of Management and Budget under the



Paperwork Reduction Act. The OMB clearance number is 0915-0060.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: September 30, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87-24363 Filed 10-20-87; 8:45 am]

BILLING CODE 4160-15-M

## National Institutes of Health

### National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the Interagency Technical Committee (IATC), sponsored by the National Heart, Lung, and Blood Institute, on December 2, 1987, from 1 p.m. to 5 p.m., at the National Institutes of Health, Building 31, C-Wing, 6th floor, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496-6161.

The entire meeting is open to the public. The IATC is meeting to give member agencies the opportunity to exchange information on the status of their respective programs that relate to heart, blood vessel, lung, and blood diseases and blood resources. Attendance by the Public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Ms. Janyce N. Hedetniemi, Chief, Planning and Coordination Branch, Office of Program Planning and Evaluation, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 5A03, Bethesda, Maryland 20892, (301) 496-5031.

Dated: October 14, 1987.

William F. Raub,

Acting Director, NIH.

[FR Doc. 87-24329 Filed 10-20-87; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Diabetes and Digestive and Kidney Diseases, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 12, 13, and 14, 1987, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892. This meeting will be open to the public on November 12 from 8 p.m. to 10 p.m., November 13 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and November 14 from 9 a.m.

to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 12 from 7:30 p.m. to 8 p.m., November 13 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and November 14 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A.19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N-222, Bethesda, Maryland 20892, (301) 496-4128.

Dated: October 2, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-24315 Filed 10-20-87; 8:45 am]

BILLING CODE 4140-01-M

## Public Health Service

[NTP-87-001] [NTP-87-002]

### National Toxicology Program; Fiscal Year 1987 Annual Plan

The National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1987*, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation.

The ninth NTP Annual Plan consists of two parts. First, the *NTP Annual Plan for Fiscal Year 1987* [NTP-87-001] describes current year NTP research, applied studies, methods development and validation efforts, resources and past year program accomplishments (Table of Contents follows this announcement). Second, the *Review of Current DHHS, DOE and EPA Research Related to Toxicology* [NTP-87-002]

lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

## Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basic and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Specific goals are to:

- Broaden the spectrum of toxicologic information obtained on selected chemicals;
- Increase the numbers of chemicals studied within funding limits;
- Develop and validate a series of tests and protocols responsive to regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates select toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control.

Primary program oversight is provided by the NTP Executive Committee which links DHHS health research institutes with Federal health regulatory agencies to ensure that the basic and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

- Agency for Toxic Substances and Disease Registry
- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health
- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration



The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and policy and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1987 Annual Plan) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director, Dr. David P. Rall, reports to the Assistant Secretary for Health.

Scientific activities are divided into four major program areas: Carcinogenesis; cellular and genetic toxicology; reproductive and developmental toxicology; and toxicological characterization. The latter area covers activities in cardiac, cutaneous, immunologic, neurobehavioral, pulmonary and renal toxicologies, and include programs in chemical disposition and chemical pathology. Program and project leaders, along with addresses and telephone numbers, are identified in the 1987 Annual Plan.

The chemical nomination and selection process is integral to the effective long-term operation of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods. Thus, the NTP welcomes nominations of chemicals for study from everyone. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

- I. Chemical and physical properties.
- II. Production, use, occurrence, and analysis data.
- III. Toxicology information.
- IV. Chemical disposition and structure-activity-relations.
- V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the NTP Annual Plan for Fiscal Year 1987, and the FY 1987 Review of Current DHHS, DOE, and EPA Research Related to Toxicology, please write or telephone the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709, (telephone: (919) 541-3991 or FTS 629-3991).

Comments on the FY 1987 NTP Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541-3971 or FTS 629-3971).

Dated: October 15, 1987.

David P. Rall,  
Director, National Toxicology Program.

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[FR Doc. 87-24316 Filed 10-20-87; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AA320-07-4212-02]

#### Bureau Forms Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the

proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone (202) 395-7340.

**Title:** Application for Land for Recreation and Public Purposes, 43 CFR Part 2740.

**Abstract:** Respondents supply information and data describing the lands requested, the proposed use of the lands, applicant qualifications, and detailed plans concerning project development and management. This information allows the Bureau to determine if the applicant and proposed use meet the requirements of the Recreation and Public Purposes Act of 1926, as amended.

**Bureau form number:** 2740-1.

**Frequency:** Occasionally.

**Description of respondents:** State and local governments and nonprofit organizations.

**Annual responses:** 170.

**Annual burden hours:** 7,990.

**Bureau clearance officer:** Rick Iovaine (202) 653-8853.

**Date:** August 24, 1987.

**Guy E. Baier,**

*Assistant Director, Land and Renewable Resources.*

[FR Doc. 87-24342 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-84-M

[ID-010-08-4212-12; I-12640]

#### Realty Action, Exchange of Public and State Lands in Owyhee County, ID; Correction

**AGENCY:** Bureau of Land Management, Idaho.

**ACTION:** Notice of correction of legal description.

**SUMMARY:** This notice corrects the legal description previously published in the *Federal Register* on January 30, 1987, page 3061, column one, for T. 12 S., R. 3 E., Section 23. The correct legal description is T. 12 S., R. 3 E., Section 23, SE¼NE¼.

All other legal descriptions remain unchanged.

**Date:** October 7, 1987.

**David B. Vail,**

*Acting District Manager.*

[FR Doc. 87-24344 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-GG-M

## Minerals Management Service

### Information Collection Submitted to Office of Management and Budget for Review Under Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7313 with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

**Title:** Quarterly Oil Well Test Report, Form MMS-1869.

**Abstract:** Respondents submit Form MMS-1869 to the Minerals Management Service's Regional Supervisor so they can evaluate the results of well tests to ascertain if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. The form is designed to provide a quarterly test of oil-well capacity for use in updating permissible producing rates and to provide the basis for estimates of currently remaining recoverable reserves.

**Bureau form number:** Form MMS-1869.

**Frequency:** Quarterly.

**Description of respondents:** Federal oil and gas lessees performing offshore production operations.

**Annual responses:** 8,400.

**Annual bureau hours:** 16,800.

**Bureau clearance officer:** Dorothy Christopher, (703) 435-6213.

**Date:** October 6, 1987.

**Richard B. Krah,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 87-24345 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-MR-M



**Development Operations Coordination Document; Union Exploration Partners, Ltd.**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Union Exploration Partners, Ltd. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0559, Block 67, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on October 9, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 13, 1987.

**J. Rogers Percy,**  
*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-24346 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-MR-M

**National Park Service****Intention To Negotiate Concession Contract; Marine Management, Inc.**

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Marine Management, Inc., authorizing it to continue to provide marina and boating facilities and services for the public at Anacostia Park, National Capital Parks—East, Washington, DC, for a period not to exceed twenty (20) years from January 1, 1988.

The proposed contract requires a construction and improvement program. The construction and improvement program required is addressed in the National Environmental Policy Act document (Environmental Assessment dated March 1987) that was prepared in conjunction with the Comprehensive Design Package for Fort McNair Marina.

The environmental assessment has been determined that this proposed action will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Superintendent's Office, National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, National Capital

Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020, for information as to the requirements of the proposed contract.

Date: September 3, 1987.

**Manus J. Fish, Jr.,**

*Regional Director, National Capital Region.*

[FR Doc. 87-24380 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-70-M

**Golden Gate National Recreation Area Advisory Commission; Meeting Agenda Addendum**

Notice is hereby given in accordance with the Federal Advisory Committee Act that an additional agenda item is scheduled at the meeting of the Golden Gate National Recreation Area Advisory Commission which will be held at 7:30 p.m. (PST) on Tuesday, November 10, 1987 at the Building 201, Fort Mason, San Francisco, California.

The additional agenda item will be a presentation to the Commission of a proposal to place a work of art as a gift to the Golden Gate National Recreation Area in a park area adjacent to the National Maritime Museum in remembrance of former Congresswoman Sala Burton. Recognition of former Representative Burton, who died in February 1987, is called for in a Congressional bill currently under review by the Senate.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after December 4, 1987. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: October 7, 1987.

**W. Lowell White,**

*Acting Regional Director, Western Region.*

[FR Doc. 87-24291 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-70-M



# INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-271]

## Certain Buoyant Metallic Balloons; Commission Decision Not To Review Initial Determination Permitting CTI Industries Corporation To Intervene as a Fully Participating Respondent

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Nonreview of initial determination permitting CTI Industries Corporation to intervene as a fully participating respondent.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 7) granting a motion of CTI Industries Corporation (CTI) to intervene in the above-captioned investigation as a fully participating respondent.

**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

**SUPPLEMENTARY INFORMATION:** On June 26, 1987, Continental American Corporation and Gerald L. Hurst filed a complaint with the Commission pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging unfair acts in the importation and sale of certain buoyant metallic balloons. The Commission issued a notice of investigation on July 28, 1987, naming as respondents Pacific Balloon Manufacturing Co., Bernhardt-Case, Inc., and You Chang Balloon Manufacturing Co.

On September 8, 1987, CTI moved, pursuant to Commission rule 210.26 (19 CFR 210.26), to intervene as a fully participating respondent. This motion was opposed by complainants but supported by the respondents Pacific Balloon and Bernhardt-Case and by the Commission investigative attorney. On September 16, 1987, the presiding administrative law judge issued Order No. 7 granting CTI's motion. Complainants filed a petition for review on September 24, 1987. Respondents, the Commission investigative attorney, and CTI opposed the petition in responses filed on October 2, 1987.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E

Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 15, 1987.

Kenneth R. Mason,  
Secretary.

[FR Doc. 87-24394 Filed 10-20-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-265]

## Certain Dental Prophylaxis Methods, Equipment and Components Thereof; Commission Decision Not To Review an Initial Determination Terminating Two Respondents on the Basis of a Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Nonreview of an initial determination (ID) terminating two respondents in the above-captioned investigation on the basis of a settlement agreement.

**SUMMARY:** The Commission has determined not to review an ID terminating respondents Sanofi Inc. and Sanofi, S.A. (Sanofi), in the investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Marcia Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0480.

**SUPPLEMENTARY INFORMATION:** This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On August 9, 1987, complainants Dentsply Research and Development Corp. and Dentsply International Inc. (Dentsply), and the Sanofi respondents filed a joint motion ((Motion No. 265-22) to terminate the Sanofi respondents from the investigation on the basis of a settlement agreement. The presiding administrative law judge issued an ID (Order No. 13) granting the motion for termination on September 17, 1987. No petitions for review of the ID were received, nor were any comments received from other government agencies or the public.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade

Commission, 701 F Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 16, 1987.

Kenneth R. Mason,  
Secretary.

[FR Doc. 87-2495 Filed 10-20-87; 8:45 am]

BILLING CODE 7020-01-M

[Investigation No. 701-TA-282 (Final)]

## Certain Forged Steel Crankshafts From Brazil

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject investigation.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a hearing to be held in connection with countervailing duty investigation No. 701-TA-282 (Final), Certain Forged Steel Crankshafts from Brazil, which the Commission instituted effective January 8, 1987 (52 FR 5200, February 19, 1987). The Commission will make its final injury determination in this case by November 24, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** October, 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Diane J. Mazur (202-523-7914), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

**SUPPLEMENTARY INFORMATION:** The Commission instituted investigation No.



701-TA-282 (Final) effective January 8, 1987 (52 FR 5200, February 19, 1987). On May 13, 1987, the Commission established a schedule for conducting the investigation (52 FR 20790, June 3, 1987). On July 21, 1987, a suspension agreement with the Government of Brazil was signed, and the Department of Commerce suspended its countervailing duty investigation regarding Brazil (52 FR 28177, July 28, 1987). However, on August 17, 1987, a request for a continuation of the investigation was filed by the Government of Brazil. Subsequently, on October 15, 1987, the Commission received notified of Commerce's final determination that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts (52 FR 38254).

The revised schedule for the Commission's investigation is as follows: requests to appear at the hearing are to be filed with the Secretary to the Commission not later than the close of business October 27, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building on October 29, 1987, at 9:30 a.m.; the deadline for filing prehearing briefs is October 30, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building on November 5, 1987, at 9:30 a.m.; and the deadline for filing posthearing briefs is the close of business November 9, 1987.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 16, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-24396 Filed 10-20-87; 8:45 am]

BILLING CODE 7020-02-M

### Certain Programmable Digital Clock Thermostats; Investigation

[Investigation No. 337-TA-278]

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 16, 1987, under section 337 of

the Tariff Act of 1930 (19 U.S.C. 1337), by the White-Rodgers Division, Emerson Electric Co., 9797 Reavis Road, St. Louis, Missouri 63123. Amendments and supplements to the complaint were filed on October 9, 1987, and October 13, 1987. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation into the United States of certain programmable digital clock thermostats, and in their sale, by reason of alleged direct, induced and contributory infringement of claim 1 of U.S. Letters Patent 4,308,991. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**FOR FURTHER INFORMATION CONTACT:** David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1088.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on October 14, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain programmable digital clock thermostats, or in their sale, by reason of direct or induced infringement of claim 1 of U.S. Letters Patent 4,308,991, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served;

(a) The complainant is—

White-Rodgers Division, Emerson Electric Co., 9797 Reavis Road, St. Louis, Missouri 63123

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Computime Limited, 1/F, Phase 2, Shui Ying Ind Building, 3 Yuk Yat Street, Tokwawan, Kowloon, Hong Kong

Hunter-Melnor, Inc., 2500 Frisco Avenue, Memphis, Tennessee 38114

Jameson Home Products, Inc., 2464 Wisconsin Avenue, Downers Grove, Illinois 60515

(c) David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 14, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-24393 Filed 10-20-87; 8:45 am]

BILLING CODE 7020-02-M



[Investigation No. 731-TA-376 (Final)]

### Certain Stainless Steel Butt-Weld Pipe Fittings From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject investigation.

**EFFECTIVE DATE:** October 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

**SUPPLEMENTARY INFORMATION:** On September 16, 1987, the Commission instituted the subject investigation and established a schedule for its conduct. Subsequently, the Department of Commerce extended the date for its final determination in the investigation from November 24, 1987, to January 29, 1988 (52 FR 37815, October 9, 1987). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: The hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on February 9, 1988; requests to appear at the hearing must be filed with the Secretary to the Commission not later than January 29, 1988; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on February 1, 1988; the deadline for filing prehearing briefs is February 4, 1988; and the deadline for filing all other written submissions, including posthearing briefs, is February 16, 1988. A public version of the prehearing staff report will be placed on the public record on January 29, 1988.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201 Subpart A through E (19 CFR Part 201).

**Authority.** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published

pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 16, 1987

**Kenneth R. Mason,**  
Secretary.

[FR Doc. 87-24397 Filed 10-20-87; 8:45 am]

BILLING CODE 7020-02-M

### DEPARTMENT OF JUSTICE

#### Lodging of Consent Decree; New Bedford, MA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. City of New Bedford* has been lodged with the United States District Court for the District of Massachusetts. The consent decree addresses alleged violations by the City of New Bedford, MA of the Clean Water Act in regard to its sewage system.

The proposed Consent Decree requires the City of New Bedford, in accordance with schedules set forth in the decree, to construct improvements to its primary sewage treatment facility, to plan, design, and construct secondary treatment facilities, to prepare a facilities plan and negotiate an implementation schedule for combined sewer overflow ("CSO") abatement facilities, to eliminate dry weather discharges from CSO outfalls, to implement its pretreatment program, to implement a sewer system inspection, repair, and maintenance program, to implement a revised operation and maintenance manual, to implement a staffing plan, and to plan and implement a grit management program. The Consent Decree also provides for the payment of a civil penalty of \$150,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of New Bedford*, D.J. Ref. 90-5-1-1-2823.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may also be examined at the Environmental

Enforcement section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of \$3.60 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-24298 Filed 10-20-87; 8:45 am]

BILLING CODE 4410-01-M

#### Lodging of Consent Decree; Thibodaux, LA, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 25, 1987, a proposed consent decree in *United States v. City of Thibodaux, Louisiana and The State of Louisiana*, Civil Action No. 87-4418 "J" (1), was lodged with the United States District Court for the Eastern District of Louisiana. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311 at the City's wastewater treatment plant. The complaint alleged that the City discharged pollutants from its plant into navigable waters in excess of the limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit and violated other terms and conditions of the permit relating to sampling, sludge disposal, and operation and maintenance. The complaint also alleges violations of an administrative order issued to the City. The State of Louisiana was named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). The complaint sought injunctive relief to require the City to comply with its NPDES permit and civil penalties for past violations. The consent decree provides for a compliance schedule to bring the City into compliance with its permit by July 1, 1988. The City is also required to pay a civil penalty of \$20,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land



and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Thibodaux, Louisiana et al.*, D.J. Ref. 90-5-1-1-2659.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of Louisiana, Hale Boggs Federal Building, Room 210, 500 Camp Street, New Orleans, Louisiana 70130 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 87-24299 Filed 10-20-87; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-86)]

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Photonics.

**DATE AND TIME:** November 9, 1987, 8:15 a.m. to 5 p.m., and November 10, 1987, 8:15 a.m. to 3 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anemarie DeYoung, Office of Aeronautics and Space Technology, National Aeronautics and Space

Administration, Washington, DC 20546, 202/453-2704.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Photonics, chaired by Dr. Stanley Weiss, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants). NASA notice numbers 87-71, 52 FR 33669, September 4, 1987, and 87-81, 52 FR 35977, September 24, 1987, are being replaced by this notice.

Type of Meeting: Open.

### Agenda

#### November 9, 1987

8:15 a.m.—NASA Photonics Program Plan Presentation.

9 a.m.—Office of Exploration Mission Presentation.

10 a.m.—Mars Rover Photonics Requirements.

11 a.m.—Earth Observing System Photonics Requirements.

1 p.m.—NASA Centers' Proposed Photonics Program.

5 p.m.—Adjourn.

#### November 10, 1987

8:15 a.m.—Ad Hoc Review Team's Discussion on NASA's Photonics Program.

3 p.m.—Adjourn.

C. Howard Robins, Jr.,

Deputy Associate Administrator for Management, National Aeronautics and Space Administration.

October 14, 1987.

[FR Doc. 87-24324 Filed 10-20-87; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Council on the Arts; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 6-7, 1987 from 9:00 a.m.-5:30 p.m. and on November 8, 1987 from 9:00 a.m.-12:00 noon in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 6, 1987 from

9:00 a.m.-5:30 p.m. and on November 7, 1987 from 9:00 a.m.-1:00 p.m. The topics for discussion will include Program Review and Guidelines for the Locals, Design Arts, Visual Arts and Media Arts Programs; Guidelines for Music Presenters/Festivals, Advancement and the Dance/Inter-Arts/State Program Presenting/Touring Initiative; the Arts Education Report and a report on International festivals.

The remaining sessions of this meeting on November 7, 1987 from 2:30 p.m.-5:30 p.m. and on November 8, 1987 from 9:00 a.m.-12:00 noon are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-24419 Filed 10-20-87; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements; Submission for Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the Office of Management and Budget (OMB) review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the OMB for review the following



proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 51.

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for approval to construct and operate power plants, applications for manufacturing licenses and materials licenses (e.g., independent spent fuel storage installations, uranium mills, fuel fabrication, UF6 conversion, decommissioning, certain medical and industrial uses of radioisotopes, and commercial radioactive waste disposal by land), nonpower reactor reviews, HEU/LEU conversions, and rulemaking petitions.

5. Who will be required or asked to report: Licensees and applicants requesting approvals for the types of actions described in item 4 above, pursuant to 10 CFR 40, 50, 61, 70, and 72.

6. An estimate of the number of responses: 11 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 20,450.

8. An indication of whether section 3504(h), Pub. L. 9696-511 applies: Not applicable.

9. Abstract: 10 CFR Part 51 of the NRC's regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

**ADDRESSES:** Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

#### FOR FURTHER INFORMATION:

Comments and questions should be directed to the OMB reviewer: Vartkes L. Broussalian, (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 16th day of October 1987.

For The Nuclear Regulatory Commission.  
Joyce A. Amenta,

*Acting Director, Office of Administration and Resources Management.*

[FR Doc. 87-24354 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-M

### Documents Containing Reporting or Recordkeeping Requirements; Submission for Office of Management and Budget (OMB) Review

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the Office of Management and Budget (OMB) review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 53, "Available Criteria and Procedures for Determining the Adequacy of Spent Nuclear Fuel Storage Capacity."

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order for NRC to determine that facilities for interim storage of spent nuclear fuel are consistent with the provisions of the Waste Policy Act of 1982.

5. Who will be required or asked to report: Licensees authorized to operate nuclear power plants.

6. An estimate of the number of responses: 3 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 3,960.

8. An indication of whether Section 3504(h), Pub. L. 9696-511 applies: Not applicable.

9. Abstract: The Nuclear Waste Policy Act of 1982 (Public Law 97-425, January 7, 1983) establishes a framework for the disposal of spent nuclear fuel and high-level radioactive waste generated by nuclear power plants, which includes an interim program for the storage of spent nuclear fuel while the repository for ultimate disposal is selected and developed.

**ADDRESSES:** Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document, 1717 H Street, NW., Washington, DC 20555.

#### FOR FURTHER INFORMATION CONTACT:

Comments and questions should be directed to the OMB reviewer: Vartkes L. Broussalian, (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 16th day of October 1987.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,  
*Acting Director, Office of Administration and Resources Management.*

[FR Doc. 87-24355 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266; 50-301; Licenses No. DPR-24; DPR-27 EA 86-148]

### Wisconsin Electric Power Co.; Order Imposing Civil Monetary Penalty

Wisconsin Electric Power Company, Point Beach Nuclear Plant, Units One and Two (Licensee) is the holder of Operating Licenses No. DPR-24 and No. DPR-27 (Licenses) issued by the Nuclear Regulatory Commission on October 5, 1970 and March 8, 1973. The Licenses authorize the Licensee to operate the Point Beach Nuclear Plant in accordance with the conditions specified therein.

#### II

A special physical security inspection of the Licensee's activities was conducted during the period July 18 through August 7, 1986. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the Licensee by letter dated March 11, 1987. The Notice states the nature of the violations, the provisions of NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated May 8, 1987.

#### III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

#### IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a Civil Penalty in the amount of Fifty Thousand Dollars



(\$50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 13th day of October 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 87-24358 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

### **Duke Power Company, et al.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Duke Power Company, et al., (the licensee) for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

### **Environmental Assessment**

*Identification of Proposed Action:* The proposed amendments would change the Technical Specifications to provide

for operation up to full power with the Upper Head Injection Accumulator (UHI) System removed. The UHI System was designed to enhance core cooling during the blowdown phase of a loss-of-coolant accident (LOCA). Similar changes have previously been approved by the Commission for McGuire Nuclear Station, Units 1 and 2 (Amendment Nos. 57 and 38 for Units 1 and 2, respectively, issued May 13, 1986).

Other changes associated with UHI removal would also be made to appropriate Technical Specifications. These include deletion of Technical Specifications requiring UHI system maintenance, surveillance, and leakage verification and modification of Technical Specifications to reflect deletion of UHI related containment penetrations and associated conductor overcurrent protective devices, containment isolation valves, and system piping snubbers. The proposed Technical Specifications also reflect changes to the ECCS cold leg injection accumulators to increase the operable range limits of the nitrogen gas cover-pressure (from 365 and 481 psig to 585 and 678 psig), and to decrease the operable range limits of their water volume (from 7853 and 8171 gallons to 7704 and 8004 gallons).

The changes to the ECCS cold leg injection accumulators would also be accompanied by appropriate modifications to instrumentation alarm functions and procedures, and by replacement of flow restricting orifices in their discharge piping with orifices of smaller diameter. However, these accompanying changes do not involve a change to the Technical Specifications.

The proposed action is in accordance with the licensee's letters dated June 12, 1987, and supplemented June 23 and August 12, 1987.

### *The Need for the Proposed Action:*

The licensee has requested this action because the UHI system has been found to cause frequent maintenance problems and operational delays. Filling and venting requirements of the UHI System add about 10 hours to a startup from cold shutdown conditions. The system contributes to occupational radiation exposure during normal operation (i.e., during surveillance and maintenance) and during refueling outages requiring removal or reconnection of injection piping to the reactor vessel upper head. The continuing operational difficulties and radiological exposures associated with the UHI system would be eliminated upon completion of system removal.

### *Environmental Impacts of the Proposed Action*

**A. Plant Radiological Releases.** The UHI system performs no function during normal operation but serves to mitigate accidents after they occur. Therefore, no adverse change in plant radiological or non-radiological releases would occur for normal operation of the plant with the UHI system isolated or removed.

By letter dated June 12, 1987 and supplemented June 23, 1987, the licensee provided safety analyses for LOCA and non-LOCA transients for the planned UHI removal using approved analytical models and methodology. The Commission has reviewed these analyses and finds that the potential radiological and non-radiological releases for accidents and transients would not be increased.

Accordingly, Commission findings in the Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2, dated January 1983 (NUREG-0921) regarding radiological and non-radiological releases from the plant during normal operation or after accidents are not adversely altered by this action.

**B. Occupational Radiological Aspects of UHI Removal.** By letter dated June 12 and August 12, 1987, the licensee described the construction changes and activities associated with UHI removal. The principal tasks involve (1) replacing cold leg accumulator flow element orifice plates, (2) cutting and capping UHI penetrations to the reactor vessel, (3) capping various UHI piping interfaces with other systems, (4) removing UHI piping, valves, support/restraints and instrumentation, (5) cutting and capping containment penetrations, and (6) changing the level and pressure on the cold leg accumulators. The dose incurred from task performance (80 person-rem per unit) is a small fraction of the 1986 annual average PWR dose of 392 person-rem per unit.

The Commission has evaluated the radiological aspects of the proposed changes against the criteria of Chapter 12 of the Standard Review Plan (NUREG-0800) and Regulatory Guide 8.8, "Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations will be as Low as is Reasonably Achievable," and has concluded that the radiological aspects of UHI removal have been fully considered, and that the radiation protection measures planned for the tasks are acceptable to protect the workers, and will result in doses that are as low as is reasonably achievable.



**C. Waste.** Removal of the UHI related components and associated tasks would generate contaminated components for each Catawba unit, mostly comprised of various-diameter pipes, valves, hangers, and thermal sleeves. An estimate of the curies of beta and gamma radioactivity contained in the UHI components to be removed is 5.3 curies per unit. This estimated activity represents less than 5.1% of the total activity shipped from Catawba Nuclear Station in solid waste during the first six months of 1987. Disposal and shipment of radioactive materials will be performed in accordance with applicable regulatory requirements.

**D. Conclusion.** Plant radiological and non-radiological releases during normal operation or after an accident will not be increased by the proposed action. Disposal of system components would add only a small fraction to the radioactivity normally shipped from the site in solid waste. The radiological exposure of construction workers during UHI removal will be as low as is reasonably achievable, and will be less than the dose which would, otherwise, result to personnel observing and maintaining the UHI system for the remainder of plant life. Accordingly, we conclude that this proposed action would result in no significant adverse environmental impact.

**Alternative to the Proposed Actions:** Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. Neither alternative would reduce environmental impacts of plant operation but would result in increased personnel radiation exposure during plant life.

**Alternative Use of Resources:** This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated January 1983 (NUREG-0921) related to this facility.

**Agencies and Persons Consulted:** The NRC staff reviewed the licensee's requests of June 12, 1987, as supplemented June 23 and August 12, 1987. The NRC staff did not consult other agencies or persons.

**Finding of No Significant Impact:** The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon this environmental assessment, we conclude that the

proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated June 12, 1987, and its supplements dated June 23 and August 12, 1987; and the Final Environmental Statement related to operation of Catawba Nuclear Station, Units 1 and 2 (NUREG-0921) dated January 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 15th day of October, 1987.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Director, Project Directorate II-3,  
Division of Reactor Projects III.

[FR Doc. 87-24356 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-M

### Standard Review Plan; Public Comment Period Extended

On August 28, 1987, the Nuclear Regulatory Commission published a notice soliciting public comment on a new Standard Review Plan Section 3.6.3 (SRP 3.6.3) entitled Leak-Before-Break Evaluation Procedures. (52 FR 32626) The original closing date for public comment of October 13, 1987, is now extended to December 4, 1987. This will allow commenters to review the final broad scope modification to General Design Criterion 4 (GDC-4) during the comment period. SRP 3.6.3 will be used to implement the broad scope GDC-4 modification.

Dated at Bethesda, Maryland, this 14th day of October 1987.

For the Nuclear Regulatory Commission.

James E. Richardson,

Assistant Director, Office of Nuclear Regulation.

[FR Doc. 87-24357 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-M

### Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any

amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 28, 1987, through October 8, 1987. The last biweekly notice was published on October 7, 1987.

### NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington,



DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 20, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free

telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

**Commonwealth Edison Company,  
Docket Nos. 50-254 and 50-265, Quad  
Cities Nuclear Power Station, Units 1  
and 2, Rock Island County, Illinois**

*Date of amendment request:* October 6, 1987

*Description of amendment request:* The proposed amendment would revise Technical Specifications (TS) 3.5.G, and associated bases, to allow a different method for ensuring the High Pressure Core Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems discharge lines are filled.

Existing TS 3.5.G.2 requires that the discharge lines of both the low pressure (Low Pressure Core Injection and Core Spray) and the high pressure (HPCI and RCIC) ECCS systems are maintained between 40 psig and 90 psig by using an ECCS fill system pump. However, in actual operation only the low pressure systems need to use a fill pump. For the high pressure systems, ensuring filled discharge lines is achievable by maintaining an adequate level in the Contaminated Condensate Storage Tank, which is the normal water source for both HPCI and RCIC. This passive method for filling HPCI and RCIC discharge lines is preferable from a reliability point of view, rather than an



active system dependent on a single fill pump. Furthermore, it is also more consistent with the actual plant instrumentation which only provides for pressure switches and control room alarms on the discharge lines of the low pressure systems.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 91(a), the licensee has provided the following analysis in their amendment application addressing the three standards.

Commonwealth Edison (the licensee) has evaluated the proposed TS amendment request and determined that operation of Quad Cities in accordance with the proposed changes:

(1) Will not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is in the conservative direction and therefore has lessened the probability or consequences of an accident as previously evaluated. Conservatism has been added by specifying a passive method for maintaining filled discharge lines in the high pressure cooling systems which is more reliable than an active method that is dependent on a single fill pump.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated because the change does not affect the requirement for maintaining filled discharge piping but only clarifies the actual method of ensuring filled discharge piping for RCIC and HPCI systems. The method utilized does not change the HPCI or RCIC system piping configurations or normal source of coolant nor does it change system setpoints or flow capacities. The only change relative to the method indicated by the current Technical Specifications is the valving out of an active component (ECCS fill pump) since a passive method provides the same function of maintaining filled discharge lines.

(3) Will not involve a significant reduction in the margin of safety since the proposed amendment does not affect the operation of the HPCI or RCIC systems. System setpoints and flow capacities remain the same.

The Commission has reviewed the Licensee's TS amendment request and concurs with the analysis for no significant hazards consideration

determination. Accordingly, the Commission proposes to determine the aforementioned amendment request does not involve a significant hazards consideration.

**Local Public Document Room**  
Location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

**Attorney for licensee:** Mr. Michael I. Miller; Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

**NRC Project Director:** Daniel R. Muller

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut**

**Date of amendment request:**  
September 24, 1987

**Description of amendment request:** By application for license amendment dated September 24, 1987, Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company, et al. (the licensees), requested changes to the Technical Specifications (TS) for the Haddam Neck Plant and Millstone Unit Nos. 1, 2 and 3 to clarify the Administrative Controls section concerning Nuclear Review Board (NRB) reports. The proposed change to the TS would be incorporated in TS 6.5.2.9.b for the Haddam Neck Plant and TS 6.5.3.9.b for Millstone Unit Nos. 1, 2 and 3.

**Basis for proposed no significant hazards consideration determination:** At the present time, TS 6.5.2.9.b and 6.5.3.9.b require that reports of NRB reviews be prepared, approved and forwarded to the Senior Vice President Nuclear Engineering and Operations within 14 days following completion of the reviews. The TS 6.5.2.9.b and 6.5.3.9.b are not specific as to the form of the report. The licensees have proposed to add a clarification as to one acceptable form of NRB report in that, NRB Meeting minutes may be used for this purpose.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (i) which involves "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The

proposed changes to TS 6.5.2.9.b and 6.5.3.9.b would only effect the TS in that an acceptable vehicle for NRB reporting (NRB minutes) would be specified in the TS. Accordingly, the proposed change to the TS is within the scope of example (i) and thus, the staff proposes to determine that it involves no significant hazards considerations.

**Local Public Document Room**  
Locations: Russell Library, 123 Broad Street, Middletown, Connecticut 06103 and Waterford Public Library, 49 Rope Ferry Road, Ferry Road, Waterford, Connecticut 06385

**Attorney for Licensees:** Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103

**NRC Project Directors:** John F. Stolz and Cecil O. Thomas

**General Electric Company, Docket No. 50-183, ESADA Vallecitos Experimental Superheat Reactor (EVESR)**

**Date of amendment request:** August 6, 1987

**Description of amendment request:** The proposed amendment would revise the Technical Specifications (TS) to authorize a general radiation survey of the facility on an annual basis instead of a semi-annual basis, as is now being conducted.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The EVESR license was amended on April 15, 1970, to authorize possession but not operation of the reactor located at the Vallecitos Nuclear Center, Alameda County, California. The EVESR has been shutdown since February 1, 1967. All fuel and other special nuclear material has been removed from the facility.

Radiation surveys for the past several years show no significant changes in the status of the facility. The current TS require that radiation status surveys be performed at least twice annually. As a result, the licensee has requested that the TS be amended to require radiation



surveys be conducted annually instead of twice annually.

The staff therefore finds that the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of previously evaluated accidents because the facility cannot operate as a reactor under existing license conditions and radiation surveys have been consistent over the past several years.

(2) Does not create a possibility of a new or different kind of accident from any accident previously evaluated because the facility cannot operate as a reactor under existing license conditions and radiation surveys have been consistent over the past several years.

(3) Does not involve a significant reduction in a margin of safety because the facility cannot operate as a reactor under existing license conditions and radiation surveys have been consistent over the past several years.

Based on the above considerations the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* N/A

*Attorney for licensee:* Harry C. Burgess, Esq., General Electric Company, Nuclear Energy Business Operations, 175 Curtner Avenue, Mail Code 822, San Jose, California 95125.

*NRC Project Director:* Lester S. Rubenstein

**General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station Unit 2 (TMI-2), Dauphin County, Pennsylvania**

*Date of amendment request:* May 16, 1986.

*Description of amendment request:* The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Appendix B Technical Specifications 3.2.1, 3.2.2, 3.2.3, 5.6.1, and 5.6.2. Specifically, the proposed amendment would: (1) modify the radiological environmental monitoring program to be consistent with the Standard Radiological Effluent Technical Specification for Pressurized Water Reactors (NUREG-0472, Revision 3, 1983) and the monitoring conducted for Three Mile Island Nuclear Generating Station, Unit 1 (TMI-1) located on the same site as TMI-2, (2) modify the station reporting requirements to be consistent with the requirements of NUREG-0472, Revision 3, 1983 and TMI-1, (3) correct typographical errors and make editorial changes which improve clarity in the specifications, and (4) delete non-essential monitoring requirements.

Proposed changes to Section 3.2.1 incorporate language consistent with NUREG-0472, Revision 3 and the TMI-1 sampling program. Minor changes to improve clarity are also incorporated.

Additionally, the period of time the licensee has to prepare and submit a special report identifying the circumstances associated with an effluent release exceeding the quarterly reporting level is changed from 30 to 60 days from the end of the affected calendar quarter. This is consistent with the requirements of Section 5.6 Station Reporting Requirements.

The licensee also proposes to change the requirement to notify the Commission within 30 days of changes in sample locations for milk or fresh leafy vegetables when samples are unavailable from identified locations. Samples at alternative locations would be taken and the cause of the unavailability of samples would be identified in the next semi-annual Radiological Effluent Release Report.

Table 3.2-1, which specifies the radiological monitoring program, would be changed to be consistent with the requirements of NUREG-0472, Revision 3. Frequencies of sampling and analysis have been changed from a specific number of days to a calendar period. The number and location of samples taken are more precisely identified. Iodine-131 analysis requirements are being deleted to reflect the fact that Iodine-131, from TMI-2, is no longer present in detectable quantities having decayed through 390 half lives.

Changes proposed for Table 3.2-2, which specifies lower limits of detection for environmental sample analyses, delete Iodine-131 and revise downward the lower limit for Strontium-90. Elimination of Iodine-131 from this table is proposed since Iodine-131 from TMI-2 is no longer present in detectable quantities. The lower limit of detectability for Cesium-137 in milk is revised from 14 pCi/l to 18 pCi/l consistent with the value specified in NUREG-0472, Revision 3. Changes are proposed in the footnotes to Table 3.2-2. These changes are to improve clarity and achieve consistency with guidance provided in NUREG-0472, Revision 3.

Section 3.2.2 would be changed to include language consistent with NUREG-0472 improving the clarity of the monitoring requirement. NRC notification and justification of changes in sample locations would be in the next semiannual Effluent Release Report rather than in the currently required special report within 30 days. Proposed changes to Section 3.2.3 are editorial in nature and improve the clarity of the requirement.

The licensee proposes to modify Section 5.6.1.A.(2) to be consistent with the requirements of NUREG-0472, Revision 3. Additionally, the proposed change deletes the requirement to

submit the Annual Radiological Environmental Operating Report as a separate report. Furthermore, it allows for submission of a single report for both Unit 1 and Unit 2. A number of editorial changes are also proposed.

Proposed changes to Section 5.6.2 delete the statement that if "a report level in Section 3 Environmental Monitoring is reached," a nonroutine report is submitted. This requirement is now stated in the proposed revision to Section 3. The requirement for submission of the report is the same; the difference is where the requirement appears in the Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration of operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI-2 is in a long-term cold shutdown for accident recovery. Short-lived fission products which make up the preponderance of the source term for operating reactors have decayed to negligible levels. The decay heat produced by the core has now dropped to less than 10 kilowatts and forced cooling of the core has not been required or used since 1981. Consequently, in previous license amendments, the staff has determined that the potential accidents analyzed for TMI-2 in the current mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR.

The changes proposed by the licensee are changes to the radiological monitoring requirements contained in Appendix B (Environmental Technical Specifications). They consist of changes to correct typographical errors, improve clarity of the requirements, and to achieve consistency with NUREG-0472, Revision 3, 1983, and Unit 1 monitoring requirements.

The proposed changes do not increase the probability or consequences of an accident previously evaluated because the changes proposed are changes in the radiation monitoring program and not changes to current safety systems or setpoints. The proposed changes do not create the possibility of a new or



different kind of accident from any accident previously evaluated because no new modes of operation or changes in equipment are being introduced. The proposed changes do not involve a significant reduction in the margin of safety because no changes to any safety system are proposed.

Based on the above considerations, the staff determines that the proposed changes do not involve a significant hazards consideration.

**Local Public Document Room location:** State Library of Pennsylvania Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Attorney for licensee:** Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

**NRC Project Director:** William D. Travers

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

**Date of amendment request:** February 26, 1987, as supplemented June 1, 1987

**Description of amendment request:** The proposed license amendment would revise the Duane Arnold Energy Center (DAEC)

**Facility Operating License No. DPR-49** by revising the Technical Specifications documenting the modifications made to the DAEC to comply with 10 CFR 50.62, the Anticipated Transients Without Scram (ATWS) rule. The modifications consist of two major changes to the DAEC: (1) The Standby Liquid Control System (SLCS) pump control circuitry is modified to provide simultaneous operation of the two existing SLCS pumps from the control room. The associated sodium pentaborate solution volume-concentration curve and temperature-concentration curve are revised accordingly; (2) An Alternate Rod Insertion (ARI) System is added, and the existing ATWS Recirculation Pump Trip (RPT) logic is replaced with logic which will improve the system reliability. This logic initiates both RPT and ARI on either low-low reactor vessel level or high reactor pressure.

The proposed Technical Specifications add ARI to the existing Limiting Conditions for Operation (LCO) and surveillances for RPT, revise the minimum number of operable channels required for the RPT/ARI system, clarify action statements, add action time requirements, and add a provision for placing an instrument in tripped condition in order to meet the operability requirements.

The remainder of the changes (e.g. adding page numbers, updating bases, etc.) are administrative in nature and by definition cannot involve any significant hazards considerations.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

#### **Standby Liquid Control System**

The addition of simultaneous operation of the SLCS pumps has no effect on the probability of an accident. A special test verified that the SLCS suction piping can deliver the increased flow rates while maintaining adequate pump net positive suction head and that there are no pump synchronization or other vibration problems with dual pump operation. The increased injection rate resulting from two-pump operation has been analyzed and its effect on the boron mixing coefficient has been found to be insignificant.

The simultaneous operation of SLCS pumps does not increase the consequences of an accident. The increase in the SLCS flowrate will bring the reactor to a subcritical condition in less time than with operation of one pump. If one of the two pumps fails, the system will operate on one pump at no greater risk than before this change. Therefore, the LCO and surveillance requirements are not required to be more stringent for compliance with 10 CFR 50.62 than for the original design basis.

The Sodium pentaborate solution volume-concentration curve in the Technical Specifications has been revised to show a new region of required volume-concentration which is more conservative. This curve, used in conjunction with the temperature-concentration curve, will ensure that the SLCS tank has sufficient shutdown capability to meet both the SLCS design basis requirements and the new ATWS requirements. The temperature-concentration curve has also been revised to be consistent with the FSAR design basis. The curve now includes a 5° F margin above the saturation temperature for the sodium pentaborate solution. Since the volume-concentration curve is revised to be more conservative and

the temperature-concentration curve is consistent with the FSAR, the probability of occurrence or the magnitude of the consequences of any accident previously analyzed has not been increased.

#### **Recirculation Pump Trip/Alternate Rod Injection (RPT/ARI)**

The proposed RPT/ARI logic modification enhances the reliability of the existing ATWS-RPT logic and adds an independent backup (i.e. ARI) to the reactor trip function of the reactor protection system. As required by the ATWS rule, the RPT/ARI logic is totally independent of the reactor protection system from the sensors through final actuated devices.

The RPT/ARI logic modification improves reliability of the existing RPT logic by changing from a one-out-of-two coincidence to a two-out-of-two logic to avoid spurious trips. Thus, the minimum number of instrument channels required to be operable was revised accordingly. The Limiting Condition for Operation (LCO) was revised to outline more clearly the actions to be taken. The time limits for those actions were added to Technical Specifications. The surveillance interval of RPT is not changed and the ARI will be tested at the same frequency as RPT.

Also, if an instrument is inoperable it can be placed in the tripped condition in order to meet its operability requirement. These changes are consistent with other non-safety-related equipment in the plant (e.g. rod block instruments). Therefore, the probability of occurrence of an accident or malfunction is not increased.

The consequences of an accident are decreased because each RPT/ARI channel will trip both recirculation pumps by means of the existing end-of-cycle RPT breakers, which will provide a more rapid core flow reduction and subsequent insertion of negative reactivity due to increased voiding in the lower region of the core, and by inserting control rods by means different from the normal trip system. The revised action statements and surveillance requirements will not affect the consequences of any accident previously analyzed, as the RPT/ARI system is not used to mitigate the consequences of any accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

#### **Standby Liquid Control System**

The switch to dual pump operation does not create the possibility of a different type of accident. Dual pump operation is an enhancement of the existing single-pump operating mode and the SLCS will operate on one pump at no greater risk than before this change. The revisions to the sodium pentaborate solution volume-concentration curve and solution temperature curve are to ensure consistency with the original design basis and the ATWS requirements and therefore, will not create the possibility of a new or different accident.

#### **RPT/ARI**

The RPT/ARI modifications and their associated technical specifications do not create the possibility for a new or different



type of accident. The changes do not alter the function or method of operation of any safe shutdown system. The RPT/ARI logic modification decreases the probability of a spurious trip; however, if the RPT/ARI logic spuriously trips, the resulting transient would be similar to, and bounded by, those previously evaluated, (e.g. dual recirculation pump trip at power). If the RPT/ARI logic fails to actuate when required, the consequences are no greater than before this design change was installed because the RPT/ARI logic is an enhancement of existing reactor protection features.

(3) Does the proposed amendment involve a significant reduction in a margin of safety? *Standby Liquid Control*

Calculations were performed to determine the need for increase in sodium pentaborate concentration for ATWS and to verify that the original SLCS design margin for single-pump operation was maintained. The increase in SLCS capacity provided by two-pump operation and the increase in minimum sodium pentaborate solution concentration from 9 to 11.8 weight percent increase the safety margin by bringing the reactor subcritical (with shutdown margin) in less time for two-pump operation than for one pump operation. These changes do not decrease the margin of safety for single-pump operation, because the original design basis is still met. The increased injection rate resulting from two-pump operation has been analyzed and its effect on the boron mixing coefficient has been found to be insignificant. The 5° F margin in the minimum solution temperature curve is consistent with the FSAR design basis and thus does not decrease the margin of safety.

#### RPT/ARI

The new combined RPT/ARI logic modification is an enhancement of existing reactor protection features and does not reduce the margin of safety. Each RPT/ARI channel will trip both recirculation pumps by means of the end-of-cycle RPT breakers, which will provide a more rapid core flow reduction and subsequent insertion of negative reactivity due to increased voiding in the lower region of the core, and by inserting control rods by a means different from the normal trip system. The associated technical specification changes for RPT and ARI will ensure that the system will perform in a reliable manner, or that the necessary compensating actions are taken, such that the margin of safety will be maintained.

Based on an evaluation of the above licensee analysis, the Commission's staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, DC 20036.

*NRC Project Director:* Martin J. Virgilio.

**Northern States Power Company,  
Docket Nos. 50-282 and 50-306, Prairie  
Island Nuclear Generating Plant, Unit  
Nos. 1 and 2, Goodhue County,  
Minnesota**

*Date of amendments request:* March 17, 1986, supplemented July 27, 1987.

*Description of amendments request:* The proposed amendment covers numerous changes throughout the Technical Specifications and changes in support of the human error reduction program at the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. The human error reduction program deals with reducing human errors in all facets of plant operations (both under normal and potential emergency conditions) that could occur by the instruction given in the maintenance areas, operating procedures, and adhering to the requirements of the Technical Specifications. Changes to the Technical Specifications include the reorganization and standardization of some sections, the addition of action statements for limiting conditions of operation, the removal of ambiguities to reduce the potential for misinterpretations that could lead to human error, and changes to ensure consistency exists throughout the Technical Specifications. Some of the changes fall into five general categories as follows:

1. A proposed action statement would be added for Limiting Conditions for Operation (LCO's) appearing in Sections 2 and 3 of the Technical Specifications. When the unit is in a LCO, the proposed change would require the licensee to (1) initiate action to place the unit in hot shutdown within 1 hour, (2) have the unit in hot shutdown within 6 hours, and (3) be in cold shutdown within the next 30 hours.

2. A clarification was found necessary regarding reactor criticality and reactor system temperature. The proposed change would replace the phrase "a reactor shall not be made or maintained critical nor shall it be heated or maintained above 200° F unless ..." with "a reactor shall not be made critical nor shall the reactor coolant system average temperature exceed 200° F unless ...".

3. A proposed action statement would be added for the applicable LCO's in Section 3 of the Technical Specifications requiring the unit to be brought from hot shutdown (547° F) to below 350° F within a 12-hour period.

4. In order to eliminate the possibility of ambiguities and misinterpretations, a proposed change is to replace "out of service" and "removed from service" with "inoperable" in the action statements.

5. A proposed change is to capitalize all words appearing in Sections 2, 3 and 4 that are defined in Section 1 of the Technical Specifications. This change will serve as an aid for the operator by clearly identifying those words that are defined in the Technical Specifications.

Other proposed changes involve the reorganization of the definitions, Section No 1; modifications to the Limiting Conditions for Operation, Section No 3; and Surveillances, Section No. 4. In Section No. 1, reordering the definitions is proposed in order to make the definitions easier for the operating staff to use. The identification letters have been dropped, since the definitions are not referred to by that letter identifier. This change will also facilitate the addition of new definitions in alphabetical order without re-lettering all the definitions.

The introductory sentence has been changed to correct the incorrect use of "infrequently."

The definition of "Reactor Critical" has been deleted since it states the obvious.

The definitions of "Dose Equivalent Iodine" and "E-Bar" have been moved from old Section 3.1.D.2 to Section 1.0 since they are definitions.

The titles "Members of the General Public" and "Containment Integrity" were changed to be consistent with the usage in the specifications.

"Rated Thermal Power" is consistent with the Standard Technical Specifications and consistent with the term "Thermal Power." Changes were made in the Limiting Conditions for Operation to use the terms "Rated Thermal Power" and "Thermal Power" as appropriate.

Changes to the introductory sentences and the definitions of "Channel Calibration", "Limiting Condition(s) for Operation", "Physics Tests", "Operable - Operability", "Safety Limits" and "Site Boundary" were made to clarify and simplify the existing definitions.

The licensee has proposed many changes throughout Sections 3 and 4 of the Technical Specifications that have been evaluated by the staff and are considered to fall under any one of the following categories:

- a. Changes that are administrative in nature.

- b. Changes that would be compatible with the existing requirements in the Standard Technical Specifications.

- c. Changes reflecting staff guidance issued in the NRC Generic Letters and additional restrictions recommended by the NRC staff.

- d. Changes that would result in deleting redundant statements.

- e. Changes involving modifications to existing action statements that would be equivalent to those appearing in the Standard Technical Specifications.

The licensee has also proposed other specific changes that do not fall under any of the categories described above. Each of these changes is described below:



A. A specific proposed change deals with changing the negative rate trip associated with power range neutron flux rate from less than or equal to 15% to less than or equal to 7%. The proposed change affects technical specification TS 2.3A2h. The change will allow the removal of an operational restriction at a reactor power level above 90% and when the rods are less than 215 steps withdrawn.

B. A specific change would waive the Technical Specification requirement of maintaining 2000 gallons of boric acid solution at 11.5 to 13% boron in the storage tanks when the reactor is in cold shutdown, since the primary system would have been already boricated in the beginning of cooldown for placing the reactor in cold shutdown. While the reactor is in cold shutdown, the boric acid solution is not needed. The proposed change involves the addition of technical specification TS 3.2.E.

*Basis for proposed no significant hazards consideration determination:*

The Commission has provided standards for determining whether a significant hazards consideration exists (51 FR 7751). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes and has determined that they do not constitute an unreviewed safety question. The licensee also has evaluated the changes against the above standards and has concluded that the proposed changes do not involve a significant hazards consideration.

The Commission has also provided examples of amendments that are likely to involve no significant hazards considerations (51 FR 7751). Example (ii) of actions involves a change that "constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement". Specifically, the proposed TS changes involve the addition of action statements for the existing Limiting Conditions for Operation (LCO) (item 1 above) and place a time limit in which the unit must be brought down to temperature below 350° F (item 3 above) and would impose additional restrictions on plant operability by specifying time limits in which the unit must be placed in a cold shutdown condition after an LCO is reached. These additional restrictions would be

in place for all of the LCO's appearing in Sections 2.0 and 3.0 of the Technical Specifications.

However, in one area of the Technical Specifications, these restrictions would replace an existing restriction that deals with the operability of the auxiliary feedwater pumps. Specifically, the licensee has proposed to change the existing time limit in which the unit must be brought down to a temperature below 350° F in the event of an inoperable auxiliary feedwater pump from what currently exists in the technical specifications. Example (vi) of actions not likely to involve a significant hazards consideration involves a "change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan ...". The proposed change would lengthen by 6 hours the time to bring the unit to cold shutdown for the case of an inoperable auxiliary feedwater pump. The proposed change may result in reducing a safety margin and change the probability or consequences of a previously analyzed accident, but the change is within the acceptable criteria with respect to safety margins and previously analyzed accidents. On this basis, the staff proposes to determine that all changes to the Technical Specifications associated with the addition of the action statements for the LCO's (item 1 above) and the action statement dealing with bringing the unit to cold shutdown (i.e., below 350° F) within a specified time (item 3 above) involve no significant hazards considerations.

Another example of actions involving no significant hazards consideration is Example (i), "a purely administrative change to technical specifications: for example to achieve consistency throughout the technical specification, correction of an error, or a change in nomenclature." The staff proposes to determine the general changes associated with the reactor criticality and reactor system temperature (item 2 above), the replacement of "out of service" and "removed from service" with "inoperable" (item 4 above) and capitalizing all words in the technical specifications that are defined (item 5 above) are administrative in nature to achieve consistency throughout the technical specifications. All changes to technical specifications related to these general changes were reviewed and the staff concluded that in no way would these changes reduce the restrictive

level or change the intent of the technical specifications.

Changes dealing with the reorganization of the definitions in Section No. 1 are administrative and/or editorial in nature and, therefore, fall under example (i) of actions not likely to involve a significant hazards consideration. The staff has reviewed all of the changes in the definition section (No. 1) and has determined that none of the changes would reduce the level of safety nor change the intent of the requirements of the technical specifications. These changes serve only to clarify and eliminate potential ambiguities that may arise when the technical specifications are applied to plant operations. On this basis, the staff proposes to determine that all changes to the definition section (No. 1) of technical specifications do not involve a significant hazards consideration.

The licensee proposed changes throughout Sections 3 and 4 of the Technical Specifications are categorized as (1) administrative in nature, (2) additional restrictions comparable to those in the Standard Technical Specifications, and (3) changes that reflect guidance appearing in the NRC generic letters. All of the proposed actions in Sections 3 and 4 of the technical specifications fall under three of the examples, (i), (ii), and (vi), provided by the Commission as actions not likely to involve significant hazards considerations. These involve:

1. (i) a purely administrative change to the technical specifications to achieve consistency throughout the technical specifications, correction of error or change in nomenclature. The actions falling under this example are clarifying statements or deletion of statements that have led to confusion when the plant operating staff has interpreted the requirements in the technical specification.

2. (ii) changes constituting an additional limitation, restriction or control not presently included in the technical specifications. The actions falling under this example are additional restrictions appearing in the Standard Technical Specifications or guidelines appearing in the NRC's generic letters. In no way do the proposed actions relax the intent of the technical specifications.

3. (vi) changes which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but where the results of the changes are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Proposed changes falling under this example involve modifications to the existing action statements that may result in some increase in the probability or consequences of a previously analyzed accident or may reduce



in some way a safety margin but that are clearly within the NRC guidelines appearing in the Standard Technical Specifications or guidance criteria given in NRC generic letters.

On this basis, the staff proposes to determine that all changes to Sections 3 and 4 of the technical specifications, except for those addressed below, do not involve significant hazards considerations.

The Commission has completed the evaluation of other proposed changes that are not covered by the above evaluation. The additional proposed changes deal with negative rate trip and the availability of 2000 gallons of inventory of boric acid solution as described in A and B above and are addressed separately below.

#### A. Negative Rate Trip

The following analysis applied the standards provided in 10 CFR 50.92 for the determination of a no-significant-hazards consideration.

1. *The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

While the proposed negative rate trip changes may result in some increase in the consequences of a previously-analyzed accident, the results are clearly within the bounds of the Commission guidance given by the safety evaluation issued by letter dated December 11, 1984 associated with analysis of the control rod drop. Furthermore, there will be no increase in the probability of a previously analyzed accident.

2. *The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

The Commission analyzed all of the potential accidents in the safety evaluations issued on February 17, 1983 and December 11, 1984. Based on review of these documents, the Commission concludes that no new or different accident will be created that could result from the proposed change.

3. *The proposed amendment will not involve a significant reduction in the margin of safety.*

The proposed change does not involve a significant reduction in a margin of safety as analyzed by the licensee and the results documented in the licensee's topical report NSPNAD-8102P, Revision 2. This report was reviewed by the Commission and found acceptable as indicated by the safety evaluation issued on February 17, 1983.

On the basis of the above discussion, the staff proposes to determine that the change in negative rate trip from less than or equal to 15% to less than or equal to 7% does not involve a significant hazards consideration.

#### B. Availability Requirement of 2000 gallon inventory of boric acid solution during cold shutdown

The following analysis applied the standards provided in 10 CFR 50.92 for the determination of a no-significant-hazards consideration.

1. *The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The boric acid exists in the reactor coolant system and the reactor is protected against the return to criticality during all accidents previously evaluated. Thus, by injecting boric acid into the primary system prior to entering cold shutdown, the volume requirement of the boric acid has fulfilled its safety function and, therefore, in no way will there be an increase in the probability or consequences of a previously evaluated accident.

2. *The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

As discussed above, once the boric acid is added to the reactor coolant system, the boric acid has fulfilled its safety function. Therefore, this change will not create a new or different kind of accident since the plant has been placed in a condition that is at a higher level of safety as opposed to hot standby or power operation.

3. *The proposed amendment will not involve a significant reduction in the margin of safety.*

No safety margins are affected by the proposed change because the change becomes effective only when the plant is brought to cold shutdown when plant conditions are at a much higher level of safety as discussed above.

On the basis of the above discussion, the staff proposes to determine that the change regarding the boric acid volume requirement during cold shut-down does not involve a significant hazards consideration.

On the basis of the above examples and the licensee's determination, the staff proposes to determine that the proposed changes to the technical specifications do not involve a significant hazards consideration.

**Local Public Document Room location:** Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota

**Attorney for licensee:** Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, N.W., Washington, DC 20037.

**NRC Project Director:** David L. Wigginton, Acting.

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

**Date of amendments request:** August 14, 1987

**Description of amendments request:** The proposed Technical Specification (TS) change would reflect minor changes in the plant organization as follows:

1. Transfer responsibility for implementation of the fire protection program from Plant Superintendent Operations & Maintenance to the Plant Manager.

2. Change the title Superintendent of Maintenance to General Superintendent of Plant Maintenance.

3. Change the title Superintendent of Operations to General Superintendent Plant Operations.

4. Change the title Plant Superintendent Engineering & Radiation Protection to General Superintendent Plant Engineering & Radiation Protection.

5. Add a new position of General Superintendent Planning and Services. Remove Supervisor of Security and Services from the organization diagram.

6. Add a new position of Assistant to the Plant Manager.

7. Add the new position of Shift Manager under the General Superintendent Plant Operations.

The proposed TS changes would also eliminate certain requirements for plant management and support staff to hold current Senior Reactor Operator (SRO) licenses, as follows:

(1) Delete the "(LSO)" notation for the General Superintendent Plant Engineering and Radiation Protection in Figure 6.1-2;

(2) Change the "(LSO)" for the General Superintendent Plant Operations to "(FLSO)" in Figure 6.1-2;

(3) Add a footnote to define "(FLSO)" at the bottom of Figure 6.1-2 as follows:

FLSO Formerly Licensed Senior Operator or Licensed Senior Operator; and

(4) Add a phrase to TS Section 6.5G to read "...may be made with the concurrence of two members of the unit management staff, at least one of whom holds a Senior Reactor Operator's License."

**Basis for proposed no significant hazards consideration determination:** The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (51 FR 7751). One of the examples is (i) "A purely administrative change to technical specifications: for example a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The licensee's proposed changes described in 1 thru 7 above involve either a change in the title of an existing position or correcting the organization chart to reflect a number of new positions resulting from an improvement in the plant organization. These are purely administrative changes in the titles of certain positions in no way affect or change the functions or scope of responsibility of the positions. Therefore, the staff considers these changes as merely changes in nomenclature. The new positions reflecting the improved plant organization do not affect the safety level of plant systems or procedures nor the previously analyzed accidents. The new positions will provide improved



management control in the areas of planning administration, security, and general housekeeping and, therefore, are considered corrections in management. Accordingly, the Commission proposes to determine that the proposed changes 1 thru 7 do not involve significant hazards considerations.

The proposed changes to eliminate certain excessive requirements for senior reactor operator (SRO) licenses for plant management would be consistent with the requirements of the Commission's Standard Technical Specifications. Example (vi) of the Commission's guidance concerning actions not likely to involve a significant hazards consideration is "A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan ...". In this case the margin of safety may be somewhat reduced in that plant management would not be required to maintain current SRO requirements but the proposed changes clearly meet the Commission requirements specified in the Standard Technical Specifications, NUREG-0452. On this basis, the staff proposes to determine that the requested action does not involve a significant hazards consideration.

*Local Public Document Room*

location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, N.W., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Pacific Gas and Electric Company, Docket No. 50-275, Diablo Canyon Nuclear Power Plant, Unit No. 1 San Luis Obispo County, California

*Date of amendment request:*

September 24, 1987 (Reference LAR 87-08)

*Description of amendment request:*

The proposed amendment would revise License Condition 2.C.(7) of the Diablo Canyon full power license, DPR-80, to allow submittal of the Long Term Seismic Program (LTSP) final report by July 31, 1989, rather than by July 31, 1988. In support of its request, PG&E presented the following discussion.

License Condition 2.C.(7) of the Diablo Canyon Unit 1 full power license, DPR-80, requires PG&E to develop and implement a program to reevaluate the seismic design

basis used for the Diablo Canyon Power Plant (Letter from D. Eisenhut to J. Shiffer, dated November 2, 1984, Issuance of Facility Operating License DPR-80). In response to this license condition, PG&E has developed the Diablo Canyon Long Term Seismic Program (LTSP). The license condition presently requires that "The program shall be completed and a final report submitted to the NRC three years following the approval of the program by the NRC Staff." The NRC Staff approval of the LTSP plan was given in a letter dated July 31, 1985, which sets the current schedule date of July 31, 1988 for final report submittal.

In 1987, the Advisory Committee on Reactor Safeguards (ACRS) recommended that the seismic design basis of Diablo Canyon should be reevaluated "in about ten years" with any applicable new information taken into account (Letter from S. Lawroski, Chairman ACRS, to J. Hendrie, dated July 14, 1978, ACRS Report on Diablo Canyon). The recommendation of the ACRS was not tied to any operational milestone but was meant to represent a reasonable time interval for assessing the utilization of applicable new geoseismic techniques and to permit the acquisition of new data in evaluating any impact on the seismic design basis. It is apparent that the ACRS intended no hard and fast time limit and assumed that the plant would operate for a number of years prior to completion of the study. Indeed, the ACRS stated in its 1978 letter that "there is reasonable assurance that Diablo Canyon Nuclear Power Station Units 1 and 2 can be operated at power levels up to [full power] without undue risk to health and safety of the public" if the seismic study were to be undertaken and other measures unrelated to seismic concerns were implemented. When the NRC initially imposed the requirement for an LTSP during the low power licensing proceeding and set a completion date of approximately three years, it reaffirmed its previous conclusions that the seismic design basis for Diablo Canyon was adequate (CLI-84-5 dated April 13, 1984).

Moreover, in its review of the LTSP plan in 1984, the ACRS also stated "[it found] no reasons to alter [its] conclusions stated in the report [ACRS's] dated July 14, 1978 regarding operation of this nuclear plant". (Letter from J. Ebersole, Chairman ACRS, to N. Palladino, dated June 20, 1984, ACRS Report on Diablo Canyon).

The NRC confirmed its previous decision regarding the LTSP during its consideration of the full power license, stating that there was no reason to modify its previous conclusion on the seismic design basis (Safety Evaluation Report Supplement No. 27, July 1984). Thus, the current schedule, which provides for completion of the LTSP three years after NRC approval of the LTSP plan, was adopted by the NRC when it issued the full power license for Diablo Canyon in 1984 (CLI-84-13, dated August 10, 1984).

PG&E has made significant progress toward the completion of the LTSP in accordance with program plan, as approved by the NRC in its July 31, 1985 letter. In conjunction with the NRC staff and its consultants, PG&E has held a number of technical workshops on the status and

progress of the LTSP since the program's inception. Recently, PG&E has submitted several interim technical reports to the NRC. However, due to several significant and recent developments, PG&E is now requesting an extension of the LTSP schedule.

First, the Diablo Canyon Rate Case, which has been pending for over three years before the California Public Utility Commission (CPUC), now has a firm schedule for submission of testimony and hearing of testimony which directly impacts personnel working on the LTSP. Second, in May 1987 the Public Staff Division, the public advocacy group within the CPUC, filed a report of over 100 volumes and 17,000 pages, setting forth its views on matters it has placed in contention. PG&E's rebuttal testimony with regard to geoseismic issues is required late this year, with hearing of testimony and related matters set for March to June 1988. In order to respond in a timely and complete fashion to the geoseismic issues, PG&E requires the assistance of several key LTSP personnel and corresponding support personnel. PG&E estimates that these personnel will be required for approximately one year to aid in the preparation of testimony, to attend and testify at hearings, to prepare findings of fact and conclusions of law and otherwise to assist in post-trial proceedings on geoseismic matters.

The information developed to date as part of the LTSP has led to a better geotectonic understanding of the area surrounding the Diablo Canyon Power Plant. At this time, PG&E has not concluded its studies. However, based on the current state of the information available, the seismic design of the plant remains adequate. Thus, the NRC's previous conclusion that the seismic design basis for Diablo Canyon is adequate remains unchanged. There are no adverse safety considerations associated with the requested schedule change and PG&E believes that there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change.

*Basis for proposed no significant hazards consideration determination:* The Commission proposes to determine that this amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92 a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change is only a schedular change to a



license condition which reschedules the time of submittal for the LTSP final report.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed change is a scheduled change and as such does not involve any physical alterations to the plant, any changes in facility operation, or otherwise affect any margin of safety.

Accordingly, the licensee has determined that the proposed change to License Condition 2.C.(7) involves no significant hazards consideration.

The NRC Staff has reviewed the proposed change and the licensee's determination and finds it acceptable. Therefore, the Staff proposes to determine that the amendment request involves no significant hazards consideration.

**Local Public Document Room**  
location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California.

**Attorneys for licensee:** Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

**NRC Project Director:** George W. Knighton

**Public Service Company of Colorado,**  
Docket No. 50-267, Fort St. Vrain  
Nuclear Generating Station, Platteville,  
Colorado

**Date of amendment request:** April 23, 1987 (P-87100)

**Description of amendment request:**  
The proposed amendment would modify Technical Specification 5.4, "Instrumentation and Control Systems Surveillance and Calibration Requirements," Tables 5.4-1 through 5.4-4 which provide the minimum frequencies for checks, calibrations, and testing of the Plant Protective System (PPS) parameters. The proposed amendment would replace the referenced method for the application of an "internal" test signal for verification of trips and alarms and adjustment for trips and indications by specifying only that a test signal be applied. This change would provide the alternative of using either an internal test signal within the appropriate instrument channel or an external test signal to simulate the sensor input. Both test signals are calibrated to National Bureau of Standards (NBS) traceable standards. This change is all inclusive within

Technical Specification 5.4 with the exception of the Scram and Rod Withdrawal Prohibit Startup Channel calibration requirements.

An applied test signal demonstrates functional operability and verification of channel response within a specified range and accuracy. The testing process ensures the capability of safety systems to perform their intended design function. Proper surveillance procedures exist to ensure that appropriate calibration and verification test methods are performed to demonstrate operability requirements.

**Basis for proposed no significant hazards consideration determination:**  
The proposed amendment does not involve a significant hazards consideration because operation of Fort St. Vrain Nuclear Generating Station in accordance with this change:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change allows for the diversity and flexibility of using either an internal or external test signal appropriately applied to demonstrate safety system operability requirements. Both test signal sources are calibrated in accordance with NBS traceable standards. Operability requirements are not changed by eliminating the specific test method referenced for the application of an internal test signal. The use of an external test signal does not change the probability for an inadvertent actuation of a PPS automatic action. Use of either test method provides a simulated input injected as closely as possible to actual sensor input considering system design. Use of an external test signal does not deviate from the requirements of IEEE-279, August 1968, committed to in the FSAR nor Criterion 19 of the FSAR General Plant Design Criteria. Also, the deletion of specific test methodology is consistent with the level of detail provided in the Standard Technical Specifications (STS). Therefore, this change does not increase the probability or consequences of an accident.

(2) Does not create the possibility of a new or different kind of accident from any previously evaluated. It has been determined that a new or different kind of accident will not be possible due to this change. The elimination of referencing a specific test method allows the alternative to use equivalent test methods to accomplish required surveillances for demonstrating operability requirements. Regulatory requirements are still accomplished by this proposed change. Therefore, no new or different kind of accident has been created.

(3) Does not involve a significant reduction in a margin of safety. Applying an appropriate test signal, either from an internal or an external source, ensures that safety systems are verified for functional requirements and calibrated within a specified range and accuracy. Proper surveillance procedures exist to ensure that appropriate levels of testing are accomplished to demonstrate operability. Allowing diversity in the use of sources with equivalent test signals enhances the ability to

ensure that surveillance frequencies and requirements are met. Therefore, this change does not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

**Local Public Document Room**  
location: Greeley Public Library, City Complex Building, Greeley, Colorado

**Attorney for licensee:** Bryant O'Donnell, Public Service Company of Colorado, P. O. Box 840, Denver, Colorado 80201-0840

**NRC Project Director:** Jose A. Calvo

**Public Service Electric & Gas Company,**  
Docket Nos. 50-272 and 50-311, Salem  
Nuclear Generating Station, Unit Nos. 1  
and 2, Salem County, New Jersey

**Date of amendment request:** July 2, 1987, as supplemented July 7, 1987

**Description of amendment request:**  
The proposed amendment would revise the Technical Specifications' Bases Section 2.2.1, Turbine Trip, and Table 3.3-1, Reactor Trip System Instrumentation, to indicate that the P-9, rather than the P-7, Permissive Setpoint will defeat the automatic block of a reactor trip on a turbine trip when 2 of 4 Power Range Neutron Flux Channels are registering greater than or equal to 50%, rather than 11%, of Rated Thermal Power. This change will permit continued reactor operation following turbine trips, provided that reactor power is no greater than 50% of Rated Thermal Power. This will enable the plant to either restart the turbine for trips which are readily correctable or to commence an orderly reactor shutdown.

**Basis for proposed no significant hazards consideration determination:**  
The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its July 2, 1987 submittal. The July 7, 1987, supplemental letter



corrected typographical errors in the original submittal.

Updated Final Safety Analysis Report (UFSAR) Section 15.2.5 contains an analysis of the condition II Partial Loss of Forced Reactor Coolant Flow. The accident scenario evaluates a fault in the power supply to a reactor coolant pump which can result in a partial loss of coolant flow. If the reactor is at power at the time of the accident, the immediate effect of loss of coolant flow is a rapid increase in the reactor coolant temperature. The accident analysis assumed that the low reactor coolant flow signal is available to trip the reactor. Above 36% of Rated Thermal Power (i. e., the P-8 setpoint), low flow in any one of the four loops will actuate a reactor trip, while between 11% and 36% of Rated Thermal Power (i. e., between P-7 and P-8) low flow in any two of four loops will actuate a reactor trip. A reactor trip signal from the reactor coolant pump circuit breaker open position is provided as an anticipatory trip signal which serves to backup the low flow signals.

Changing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power will not affect the low reactor coolant loop flow or reactor coolant pump circuit breaker open position signals. The change removes the defeat of the automatic block of reactor trip upon turbine trip from P-7, which is an independent trip signal from the two signals provided for protection against a partial loss of coolant flow. Above 50% of Rated Thermal Power, the 30 second turbine-generator motoring feature is still available as the P-9 setpoint only serves to trip the reactor upon a turbine trip. The 30 second time delay associated with the generator decoupling from the network is an independent feature from the turbine trip signals and even if this feature fails upon turbine trip, sufficient Reactor Protection System (RPS) signals are available as described above to mitigate an overpower transient. As a result, the UFSAR Section 15.2.5 accident analysis bounds the consequences of a turbine trip event below 50% of Rated Thermal Power with or without turbine-generator motoring and hence the proposed changes do not increase the possibility or consequences of this previously evaluated accident.

UFSAR Section 15.2.7 contains an analysis of the Condition II Loss of External Electrical Load and/or Turbine Trip. The description of the accident sequence identifies that the reactor would be tripped directly from a signal derived from the turbine auto stop oil pressure and/or the turbine stop valves unless below 11% of Rated Thermal Power, that power level associated with the P-7 permissive setpoint. The analysis however contains several conservative assumptions including: (1) a complete loss of steam load at 102% of full power, (2) no direct reactor trip upon turbine trip, and (3) no credit for steam dump or steam generator power operated relief valves. Four accident evaluations were completed using the LOFRAN digital computer program assuming beginning of life conditions for minimum moderator reactivity feedback and end of life conditions for maximum moderator reactivity feedback both of which were completed assuming credit for the effect of pressurizer spray and

power operated relief valves (PORVs) as well as assuming no credit for pressurizer spray and PORVs. These four cases have been evaluated using the P-9 setpoint (nominal 50% power).

The analyses performed without pressure control, both minimum and maximum reactivity feedback cases, indicate that a reactor trip on high pressurizer pressure will occur within 6-7 seconds if the event is initiated from full power, and within about 12-17 seconds if the event is started from 50% power. For both the full power and partial power evaluations, the reactor trip occurs long before the fast bus transfer is attempted, thus the loss of flow which may occur due to the fast bus transfer failure after 30 seconds of turbine-generator motoring will have no effect on the transient for either the full or partial power cases.

The analysis performed at partial power (50%) with pressure control from the pressurizer PORVs and sprays, for both the minimum and maximum moderator reactivity feedback cases, indicate that the reactor may not trip until an undervoltage or low flow setpoint is reached after failure of the fast bus transfer 30 seconds into the event. The power, temperature and pressure conditions which exist at the time of the loss of flow for the partial power cases are much less severe with respect to minimum DNBR than those conditions which exist for the complete loss of flow event (UFSAR Section 15.3.4).

For the minimum feedback case, the reactor will essentially remain at the 50% power level until the reactor trip occurs on the reactor coolant pump undervoltage or low flow signal. The reactor coolant average temperature increases for the partial power loss of load event; however, the RCS average temperature will not significantly increase above the nominal full power RCS average temperature and thus will not offset the (DNB) benefit from the large difference in power level. The power transient for the maximum reactivity feedback case will steadily decrease from the initial power level due to the heatup and moderator feedback effect. The RCS average temperature for this case will increase, but not above the nominal full power RCS average temperature, so the resultant minimum DNBR will be greater than the minimum DNBR for the loss of flow event (UFSAR Section 15.3.4). Therefore, the FSAR full power complete loss of flow event bounds the partial power cases with respect to the minimum DNBR reached during the transient. The cases without pressure control are always more limiting with respect to peak pressures and, as stated above, the UFSAR full power loss of load event will bound any partial power event with respect to peak pressure.

Finally, the proposed change would increase the turbine trip to 50% of Rated Thermal Power and hence the reactor would not be tripped above the 11% Rated Thermal Power level identified in the accident description. However, since the LOFRAN computer program did not take credit for the direct turbine-reactor trip, whether such a trip takes place or not does not affect the results of this accident analysis. Hence changing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power has

no bearing on the results of the loss of external electrical load and/or turbine trip. As a result, the UFSAR Section 15.2.7 accident analysis bounds the consequences of a turbine trip event below 50% of Rated Thermal Power with or without a subsequent reactor trip and hence the proposed changes do not increase the probability or consequences of this previously evaluated accident.

UFSAR Section 15.3.4 contains an analysis of the Condition III Complete Loss of Forced Reactor Coolant Flow. This accident sequence evaluates the effects of a complete loss of forced reactor coolant flow from a loss of electrical power supply to the reactor coolant pumps.

Changing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power will not affect the RPS signals provided for protection against a complete loss of forced reactor coolant flow. The change removes the defeat of the automatic block of reactor trip upon turbine trip from the P-7 signal and adds the defeat to the P-9 permissive signal. This is an independent trip signal from the three signals identified above which remain unaffected. Between 11% and 50% of Rated Thermal Power the three signals identified above will still be available to mitigate the consequences of a complete loss of forced reactor coolant since the reactor coolant pumps will still be operating. Above 50% of Rated Thermal Power the three signals will function as they do currently for P-7. The installation of the P-9 setpoint in no way alters or affects the capability of the RPS to perform its intended function. As a result, the UFSAR Section 15.3.4 accident analysis bounds the consequences of a turbine trip event below 50% of Rated Thermal Power with or without a subsequent reactor trip and hence the proposed changes do not increase the probability or consequences of this previously evaluated accident.

Inherent within the proposed change is the capability of the Turbine Control System to handle a steam dump to the condenser at or below 50% of Rated Thermal Power. UFSAR Section 10.4.4.1 discusses the design of the steam dump control system and discusses the consequences should the system fail to operate both above and below 50% of Rated Thermal Power.

The operation of the steam dump system is not the only means to control secondary system pressure following a load loss or turbine trip. Therefore, credit can be taken for the function of this system, and hence, it can be concluded that a reactor trip below 50% of Rated Thermal Power is not required following a loss of load or turbine trip from a pressure standpoint. Additionally, increasing the turbine-reactor trip setpoint from 11% to 50% of Rated Thermal Power does not create the possibility of a new or different accident in terms of the capability of the secondary system to handle full or partial load pressures in the event the turbine control system fails to automatically dump steam to the condenser.

Westinghouse has completed a study of the potential for increased pressurizer PORV opening from a turbine trip without a reactor trip at 50% of Rated Thermal Power and has



concluded that (i) a turbine trip below 50% of Rated Thermal Power will not result in opening the pressurizer power operated relief valves, and (ii) that even considering the scenario along with degraded control system performance (i.e. steam dump system, pressurizer spray system or rod control system failure), the pressurizer power operated relief valves will not open.

The use of the P-9 setpoint for SGS Unit No. 1 is restricted until receipt and installation of hardware required to actually change the setpoint (currently PSE&G has only enough material onsite to install the modification for SGS Unit No. 2). As a result, PSE&G is proposing the use of the P-8 setpoint (i.e. at or below 36% of Rated Thermal Power) in the interim between NRC issuance of this amendment request and the subsequent receipt and installation of the P-9 hardware. The proposed change does not affect the P-7 setpoint in any manner other than to remove the turbine-reactor trip permissive. Similarly, the addition of this permissive to the P-8 setpoint does not affect any other functions the P-8 setpoint currently performs. Additionally, the P-8 setpoint (less than or equal to 36% of Rated Thermal Power) is less than the P-9 setpoint (less than or equal to 50% of Rated Thermal Power) and hence, the accident analyses which bound the proposed change for P-9 also bound the proposed temporary change for P-8. Therefore, the use of a P-8 setpoint prior to the P-9 setpoint on SGS Unit No. 1 will not create the potential for any new or different kind of accident than previously evaluated.

The proposed change does increase the turbine-reactor trip to 50% from 11% of Rated Thermal Power; however, this increase is not a significant change in the margins of safety. This conclusion can be reached because of the inherent design feature of SGS, namely that the turbine control system is already designed such that a 50% steam dump is within the operating limits of the station. Hence, the design of the plant is not changing, only the current Technical Specifications governing turbine-reactor trips. In addition, the proposed change conforms to Example 6 of 48FR14870 in that the change is clearly within all acceptable criteria with respect to the system.

Therefore, on the basis of the licensee's analysis, with which the staff agrees, and because the proposed changes fit the example cited above wherein the acceptable criteria of Standard Review Plan Sections 15.2.1 - 15.2.5, 15.3.1 and 15.3.2 are satisfied, the Commission proposes to determine that the proposed changes involve no significant hazards considerations.

**Local Public Document Room**  
location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

**Attorney for licensee:** Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

**NRC Project Director:** Walter R. Butler

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

**Date of amendment requests:** June 2, 1987 (TS 234)

**Description of amendment requests:** The proposed amendments would change the Browns Ferry Nuclear Plant technical specifications for Units 1, 2, and 3, to clarify that areas in which the intensity of radiation is exactly 1000 mrem/hr are covered by high radiation area control procedures. The current technical specification requirements 6.3.D.1 and 6.3.D.2 cover high radiation areas "less than 1000 mrem/hr" and "greater than 1000 mrem/hr," respectively. The proposed amendments would change technical specification 6.3.D.1 to cover high radiation areas less than or equal to 1000 mrem/hr.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide the Commission its analysis, using standards in 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 50.92, the licensee has performed the following analysis of these standards as they relate to the proposed change to clarify that areas in which the intensity of radiation is exactly 1000 mrem/hr are covered by high radiation area control procedures:

1. Since the proposed amendment will serve only as a clarification of existing requirements and no relaxation of any current requirements will result, there will be no increase in the probability or consequences of an accident.

2. The proposed amendment will not eliminate or modify any protective function nor permit any new operational condition; and, therefore, will not create any new accident possibilities.

3. Since the proposed amendment is administrative in nature and will correct a deficiency in the current technical specification, no reduction in a safety margin will result.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

**Local Public Document Room**  
location: Athens Public Library, South Street, Athens, Alabama 35611.

**Attorney for licensee:** General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

**NRC Assistant Director:** John A. Zwolinski

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

**Date of amendment requests:** May 22, 1987 (TS 87-24)

**Description of amendment requests:** The proposed amendments would modify Technical Specification (TS) Section 3/4.4.8 to reflect changes in the measurement of the Reactor Coolant System (RCS) specific activity. Specifically, the proposed amendments would: (1) change references of specific activity to units of microcuries per milliliter from microcuries per gram, (2) change references to various isotopes of iodine cited in item 4 of Table 4.4-4 to Dose Equivalent I-131 Concentration, and (3) add a concise definition of gross activity and an explanation of how gross activity is evaluated.

The proposed changes would provide for the most commonly used terminology in the industry, consistent evaluation of the RCS specific activity, and a clearly understood meaning of the term "gross activity" and the manner in which the gross activity of the RCS is evaluated.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed technical specification change would make three amendments to the Limiting Condition for Operation (LOC) 3.4.8 and the associated Surveillance Requirements (SRs). First, references to specific activity in the reactor coolant system (RCS) would be made in terms of a unit volume rather than a unit mass; microcuries per milliliter would replace references to microcuries per gram. Second, the results of isotopic analysis for iodine (I) would express activity in terms of Dose Equivalent I-131 rather than activity in terms of various isotopes of iodine. Third, a concise definition of gross activity is provided. This proposed amendment does not involve a change in plant hardware, plant operating setpoints or



limits, or plant operating procedures. Thus, the proposed technical specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As previously stated, the proposed amendment does not involve a change in plant hardware, plant operating setpoints or limits, or plant operating procedures. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in the margin of safety?

No. Again, as previously stated, the proposed amendment does not involve a change in plant hardware, plant operating setpoints or limits, or plant operating procedures. The proposed amendment does provide for both the use of terminology that is common within the industry and a concise definition of gross activity, thereby reducing the potential for misinterpretation of the affected technical specification. Thus, the proposed amendment involves no reduction in the margin of safety but rather provides for an increase in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

**Local Public Document Room**  
location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Attorney for licensee:** General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

**NRC Assistant Director:** John A. Zwolinski

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

**Date of amendment requests:** May 29, 1987 (TS 87-19)

**Description of amendment requests:** The proposed change would delete action statement "b" of Technical Specification (TS) 3.6.5.2 which allows power operation for up to 30 days when the ice bed temperature monitoring system is inoperable, provided that required air handling and refrigerant equipment is operable. With deletion of this statement, action statement "c" would apply, which allows power operation to continue for only 6 days with an inoperable ice bed temperature monitoring system, under certain conditions.

**Basis for proposed no significant hazards consideration determination:**

Ice condenser preoperational testing and refrigerant unit heat load testing identified deficiencies in ice condenser cooling system performance. The test data indicate that the action statement requirements would not ensure that the ice bed temperature would remain within acceptable limits. Therefore, the licensee has proposed to delete this action statement so the more restrictive statement "c" would govern. The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The operability of the ice bed temperature monitoring system ensures that the capability is available for monitoring the ice temperature. In the event the monitoring system is inoperable, the action requirements provide assurance that the ice bed heat removal capacity will be retained within the specified time limits. The function of the ice condenser system is to provide pressure suppression capability to primary containment in the event of a loss of coolant accident. It is necessary to delete the proposed action statement because operating requirements cannot be met and thus ensure that adequate pressure suppression capability will be available. The proposed change will enforce more stringent shutdown requirements if unable to monitor ice bed temperature. The possibility of accidents previously evaluated has been decreased.

2. Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. Deletion of the action statement removes an option to continue power operation for a specified time, while trying to restore the ice bed temperature monitoring system to an operable condition. Compliance with the remaining action statement must still be met. The possibility for a new or different type of accident has not been created.

3. Is the margin of safety significantly reduced?

No. The same shutdown requirements still apply if unable to monitor ice bed temperature, and the same surveillance testing is applicable to detect any problems with the monitoring system. Thus, the margin of safety has not been changed.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff

proposes to determine that the application for amendments involves no significant hazards considerations.

**Local Public Document Room**  
location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Attorney for licensee:** General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

**NRC Assistant Director:** John A. Zwolinski

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

**Date of amendment requests:** June 10, 1987 (TS 87-28)

**Description of amendment requests:** The proposed amendments to the Technical Specifications (TS) would move requirements for certain radiation monitors (high-range containment) from TS Section 3.3.3.1, "Radiation Monitoring Instrumentation" to Section 3.3.3.7, "Accident Monitoring Instrumentation." The proposed change also adds limiting conditions for operation and surveillance requirements for high-range noble gas effluent monitors. The accident monitoring equipment was installed in accordance with TMI Action Plan item IIF.2.2 and IIF.1.3.

TS for these monitors were originally proposed, along with other TMI Action Plan items, in an application dated January 25, 1984. Editorial corrections to the TS pages were provided in Enclosure 1 to a letter dated December 9, 1985. These submittals were initially noticed in the *Federal Register* on September 28, 1984 (49 FR 38410) and December 17, 1986 (51 FR 45214), respectively.

The pages of the above submittals relating to containment high range and noble gas effluent monitors are completely superseded by this June 10, 1987, application.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:



1. Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The containment area and noble gas monitors provide helpful information to the operator in assessing the plant condition during and following an accident. The consequences of an accident or occurrence previously evaluated may actually be reduced because of the extended range of the containment area monitors and the installation of additional diagnostic equipment provided by the noble gas monitors.

2. Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. Installation of the high-range radiation monitors does not create the possibility for a new or different type of accident than previously analyzed. The monitors only connect to the release paths.

3. Is the margin of safety significantly reduced?

No. The margin of safety is actually increased because of the additional diagnostic capabilities. The high-range radiation monitors are required to be operable, and out-of-service times for this equipment are limited by the action statements.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

**Local Public Document Room**  
location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Attorney for licensee:** General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

**NRC Assistant Director:** John A. Zwolinski

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

**Date of amendment requests:** August 11, 1987 (TS 87-32)

**Description of amendment requests:** The proposed amendments to the Technical Specifications would increase the diesel generator continuous and two-hour ratings in the surveillance requirements. The change ensures that the diesel generator sets can obtain the manufacturer's load ratings for the test method used and thus that the surveillance will demonstrate that the diesel generators can operate at the higher load ratings. In addition, a wording change from "2000 hour rating" to "continuous rating" would be made for consistency with IEEE Standard 387-1972.

**Basis for proposed no significant hazards consideration determination:**

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The proposed revision to the surveillance test requirements is in the conservative direction. It ensures that the surveillance criteria is appropriate for the test method used. The change makes the acceptance criteria more restrictive, and ensures that the diesel generator sets can obtain the manufacturer's load ratings for the test method used. The wording change simply provides clarity and consistency between the specifications and industry standards. Therefore, the probability or consequence of any evaluated accident in the safety analysis report is not increased.

2. Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. The proposed change requires no hardware or setpoint changes. The function of the diesel generators and its support equipment is not changed. The change makes the acceptance criteria for the diesel-generator set load ratings more restrictive, and ensures that it is appropriate for the test method used. As such, the possibility of an unevaluated accident is not created.

3. Is the margin of safety significantly reduced?

No. The proposed change makes the surveillance criteria more restrictive by testing the diesel-generator sets to the manufacturer's ratings. The wording change will provide clarity to the surveillance requirement and consistency with industry standards. Because of this, the proposed change will increase the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

**Local Public Document Room**  
location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Attorney for licensee:** General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

**NRC Assistant Director:** John A. Zwolinski

**Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington**

**Date of amendment request:** September 1, 1987

**Description of amendment request:** The licensee has proposed a modification to Table 3.3.2-2, "Isolation Actuation Instrumentation Setpoints," of the WNP-2 Technical Specifications. The proposed amendment is to change the allowable range for the trip setpoint for trip function 1.d., Primary Containment Isolation, Main Steam Line Tunnel Temperature - High. The new trip setpoint range would be "less than or equal to 164 degrees Fahrenheit" in place of the currently specified range of "less than or equal to 150 degrees Fahrenheit." The allowable value (the third column in Table 3.3.2-2) would not be affected by the proposed amendment.

The action statement in Technical Specification 3.3.2 is based on the allowable value in the table rather than on the allowable trip setpoint range. The specified trip setpoint range does not include the allowable value. The margin between the trip setpoint range and the allowable value is to accommodate realities of monitoring instrumentation such as accuracy and drift as well as to accommodate precision with which an instrument can be set.

The objective of monitoring steam line tunnel temperature is to provide an early indication of and response to a main steam line leak. At the time of issuance of the WNP-2 Operating License and Technical Specifications, the licensee based the allowable value for the trip function on a calculation of tunnel temperature resulting from a steam leak rate corresponding to a 25 gpm condensate leak. The computed tunnel temperature of 185 degrees Fahrenheit was adjusted for theoretical instrumentation considerations and then further conservatively reduced to 170 degrees Fahrenheit as the submitted Technical Specification allowable value proposed by the licensee. The trip setpoint limit was arrived at by subtracting from the allowable value an additional allowance for instrument drift of 6 degrees yielding 164 degrees F. However, the licensee established the upper limit for the trip setpoint at 150 degrees F in consideration of potential long term concrete degradation effects not related to instrumentation constraints.

During the summer of 1987, temperature in the main steam line tunnel exceeded the trip setpoint value but with no steam line leak contributing to the heat load. In the summer of 1986



the licensee had also experienced elevated temperatures in the tunnel and subsequently attempted to eliminate the condition by improving area cooler performance and reducing heat loads.

In recognition of the higher ambient temperature prevailing in the tunnel during the summer months, the licensee has proposed that the trip setpoint range be revised to "less than or equal to 164 degrees Fahrenheit." The 6 degree margin to the allowable value will adequately allow for total instrumentation loop inaccuracy, calibration error and maximum instrumentation drift expected in the eighteen month interval between required calibrations.

The licensee has stated that equipment qualification concerns associated with this change in set point are currently being addressed, particularly the effect of elevated temperature on the MSIV solenoid pilot valves, motor operators and cabling. The most sensitive items are the solenoid pilot valves, which currently must be replaced on a regularly scheduled basis. The replacement schedule is affected by the time-at-temperature profile which will continue to be monitored. Similarly, concrete will deteriorate when exposed for a long period of time at temperatures above 150 degrees Fahrenheit. Accelerated degradation can occur above 200 degrees Fahrenheit. The minor temperature excursion above the 150 degree threshold limit, coupled with relatively short time periods of exposure, will have no measurable effect on the concrete.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; and (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the new trip setpoint range continues to provide an adequate margin for instrumentation so that the allowable value is not exceeded.

The proposed change does not create the possibility of a new or different kind of accident than previously evaluated because the higher temperature now known to prevail in the tunnel does not create new or different adverse short term effects on structures or equipment. Any effects are long term and can be accounted for in the management of the WNP-2 equipment qualification program.

The proposed change does not involve a significant reduction in a margin of safety because the allowable value will not be revised.

Based on our review of the proposed modification, the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

**Local Public Document Room location:** Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

**Attorney for licensee:** Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036

**NRC Project Director:** George W. Knighton

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

**Date of amendments request:** April 10, 1986 and July 17, 1987

**Description of amendments request:** These amendment requests were originally noticed May 21, 1986 (51 FR 18698). Subsequent to this noticing, the licensee responded, by letter dated July 17, 1987, to the staff's May 5, 1987 request for additional information. An item in this request for additional information noted that 10 CFR Part 55 had been revised (effective May 26, 1987) to require that records relating to training and qualification for current NRC-licensed staff and key personnel be retained until the operators' license is renewed. The licensee's July 17, 1987 response to the request for additional information revised the proposed amendments to be in conformance with the new regulation.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether actions involve significant hazards considerations by providing certain examples (51 FR 7751).

One of the examples of actions not likely to involve a significant hazards consideration is example (vii), a change to conform a license to changes in the

regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The staff has reviewed the proposed Technical Specification revisions and determined that they constitute a change to conform the licenses to the regulations. Therefore, the staff proposes to determine that the revision of the amendments involve no significant hazards consideration.

**Local Public Document Room location:** Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

**Attorney for licensee:** Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

**NRC Project Director:** David L. Wigginton, Acting.

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

**Date of amendments request:** August 26, 1987

**Description of amendments request:** The proposed amendments would incorporate a change to Technical Specification (TS) 15.4.11, "Control Room Emergency Filtration," and incorporate administrative changes to non-radiological Technical Specifications 16.1 and 16.5. The proposed change to TS 15.4.11 modifies the laboratory sample analysis parameters for temperature and iodine concentration for the periodic iodine-removal efficiency testing in-place charcoal adsorbent. The proposed administrative changes to TS 16.1 and 16.5 would revise the wording of the "WPDES Permit" definition to be more generic, and correct an improper reference to another part of the TS, respectively.

**Basis for proposed no significant hazards consideration determination:** The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.



The licensee has examined its application with respect to the criteria of 10 CFR 50.92 and provided the following analysis of no significant hazards considerations using the Commission's standards.

"The first criterion of this Part [50.92] concerns changes involving a significant increase in the probability or consequences of an accident previously evaluated. The change to Specification 15.4.11 partially alters the test conditions under which charcoal adsorbent iodine-removal efficiency is calculated. This change results from adoption of a modern (February 1986) ASTM standard which was written for application to the commercial nuclear power industry. Since the new test conditions would more closely simulate the actual post-design basis accident conditions seen by the control room emergency filtration system, a more accurate appraisal of charcoal bank performance is obtained. As a result, control room habitability can be more accurately assessed. The probability or consequences of an evaluated accident, therefore, do not change. The changes to the non-radiological specifications are purely administrative and cannot, by their nature, effect a significant increase in the probability or consequences of an evaluated accident.

"The second criterion of Part 50.92 involves creating the possibility of a new or different kind of accident. The proposed changes are either an improvement in a specified surveillance analysis or administrative in nature; therefore, a new or different kind of accident from any accident previously evaluated cannot result from these changes.

"The third criterion concerns a significant reduction in a margin of safety. While the change to Specification 15.4.11 does adopt a new standard, the new test criteria will provide a better assessment of the charcoal adsorbent bank performance in their design condition.

From this standpoint, therefore, the margin of safety is actually increased; and, again, the changes to the non-radiological Technical Specifications, by their administrative nature, do not cause a reduction in a margin of safety."

The staff has reviewed the licensee's no significant hazards consideration and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

**Local Public Document Room location:** Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

**Attorney for licensee:** Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

**NRC Project Director:** David L. Wigginton, Acting.

**Yankee Atomic Electric Company,  
Docket No. 50-029, Yankee Nuclear  
Power Station, Franklin County,  
Massachusetts**

**Date of amendment request:**  
September 15, 1987

**Description of amendment request:**  
The proposed amendment would change the expiration date for the Yankee Nuclear Power Station Operating License, DPR-3, from November 4, 1997, to July 9, 2000. The Technical Specifications for the plant would not be affected. The current term of the Operating License is 40 years, commencing with the November 4, 1957 issuance of the Construction Permit, this represents an effective Operating License (OL) term of only 37 years and four months as the OL was issued on July 29, 1960. Current NRC practice as stated in 10 CFR 50.51 is to issue an OL with a term of 40 years from date of issuance. This amendment proposes to extend the OL in accordance with current practice.

**Basis for proposed no significant hazards consideration determination:**  
The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the September 15, 1987, letter states the following:

The proposed amendment to the Yankee operating license does not involve any changes in the design, operation or Technical Specifications of the facility, but instead, only requests a change to the expiration date of the current license. This extension is within the range permissible by the Commission's regulations, specifically 10 CFR 50.51. In addition, a finding of no significant hazards consideration is consistent with recent NRC actions on applications of this type. The proposed extension will have no significant impact on the safe operation of the plant or present an undue risk to the health and safety of the public.

The proposed license amendment to permit the 40-year operating life does not constitute a significant hazards consideration as defined in 10 CFR 50.92 for the following reasons:

a. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. Age-related

degradation was identified as the only mechanism having potential impact on the probability of occurrence of an accident previously evaluated. Changes in the population size and distribution were identified as the only parameter having potential impact on previous conclusions concerning the consequences of an accident previously evaluated.

Conservatism has been incorporated, in the design, construction, and operations of the Yankee facility. Furthermore, programs have been developed and implemented to: (1) evaluate and maintain the service life of structures, systems, and components, (2) conduct technical analyses for verifying the adequacy of structures, systems, and components, and/or (3) allow surveillance, maintenance, and inspection of the facility. Such programs assure that the Yankee facility will be operated as intended by its design and the Technical Specifications. That is, regardless of the age of the overall facility, these programs assure that the structures, systems, or components will be refurbished and/or replaced to maintain component functional capability, and the margins of safety required by the Technical Specifications.

The fracture toughness of the reactor vessel to thermal shock during a postulated loss-of-coolant-accident has been determined by the NRC to be acceptable in accordance with the Pressurized Thermal Shock (PTS) requirements of 10 CFR 50.61. In particular, it was determined that the Yankee reactor will not reach the NRC's screening criterion for the calculated PTS reference temperature until March 2020. Therefore, the proposed amendment additional term of two years and eight months to July 9, 2000 is not significant in terms of reactor vessel fracture toughness.

No changes to the above programs are necessary for assuring that during the proposed amendment term the Yankee facility continues to perform as intended by its design and the Technical Specifications during an additional two years and eight months of operation. Therefore, the proposed amendment will have no significant impact on plant safety.

In 1986, Yankee Atomic Electric Company conducted a study to update the 1980 population figures found in the FSAR and to project populations for the year 2000. As the report indicates, the 50-mile area surrounding the Yankee facility is expected to remain predominantly rural. There are no changes to the Exclusion Area boundaries; the increase in population in the Low Population Zone is projected as being negligible, and the nearest Population Center, which is approximately 20 miles from the Yankee facility, will remain so. Based on the results of this study, the off-site exposures from releases due to postulated accidents are expected to remain well within the limits set forth in 10 CFR, Part 100.

Because there have not been significant changes in the population and its distribution surrounding the Yankee facility, no significant changes are predicted through the year 2000, and Yankee Atomic Electric Company will continue to operate the facility in accordance with its design and Technical



Specifications, the potential radiological consequences of an accident previously evaluated remain unchanged.

The proposed amendment will not result in an increase in the probability or the consequences of an accident previously evaluated in the FSAR because: (1) facility operations will be continued in accordance with the facility's approved design and Technical Specifications, and (2) changes to the population and distribution surrounding the Yankee facility are expected to be negligible.

b. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Conservatism has been incorporated in the design, construction, and operations of the Yankee facility. Furthermore, programs have been developed and continue to be implemented to assure that the facility is operated as intended by design and in accordance with the Technical Specifications. In particular, the In-Service Inspection, Environmental Qualification, and Preventive Maintenance Programs assure that facility structures, systems, and components will be refurbished or replaced as appropriate. That is, regardless of the age of the facility, these programs ensure that structures, systems, and components are refurbished and/or replaced to maintain component functional capability and the margins of safety required by the Technical Specifications. No changes to these programs are necessary for assuring that the Yankee facility will continue to perform as designed and in accordance with the Technical Specifications during an additional two years and eight months of operation. Therefore, there is no possibility that a different type of accident is created.

c. The proposed amendment does not involve a significant reduction in a margin of safety.

The margins of safety identified in the Technical Specifications have been incorporated into the Yankee facility's design, construction, and operations. With respect to operations, such margins are the basis for the facility operating and emergency procedures, as well as the Yankee In-Service Inspection, Environmental Qualification, and Preventive Maintenance Programs.

The inspection, surveillance, and maintenance requirements of these programs assure that, regardless of the age of the overall facility, the functional capabilities of structures, systems, and components will be maintained throughout the life of the facility through refurbishment and/or replacement as appropriate to meet the Technical Specifications. No changes to these programs are necessary to assure that during the additional two years and eight months of operation the Yankee facility will continue to perform as intended by its design and the Technical Specifications.

Therefore, the proposed amendment does not reduce the margin of safety as defined in the Technical Specification bases.

Based on the above the licensee concludes that the extension of Yankee's operating license in accordance with the proposed

amendment will not involve a significant increase in the probability or consequences of accidents previously considered, nor create the possibility of a new or different kind of accident, and will not involve a significant reduction in a safety margin. Therefore, they conclude that there is no significant hazards consideration associated with the proposed amendment to the Yankee operating license.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make no significant hazards consideration determination.

**Local Public Document Room**  
location: Greenfield Community College,  
1 College Drive, Greenfield,  
Massachusetts 01301.

**Attorney for licensee:** Thomas Dignan,  
Esquire, Ropes and Gray, 225 Franklin  
Street, Boston, Massachusetts 02110.

**NRC Project Director:** Vernon L.  
Rooney, Acting Director

#### **PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this biweekly notice. They are repeated here because the biweekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

**Date of amendment request:** May 29, 1987, as supplemented August 3, 1987

**Description of amendment request:** The amendment would revise the Technical Specifications to permit the Residual Heat Removal pumps to remain operable during the performance of Safety Injection System Test.

**Date of publication of individual notice in Federal Register:** September 9, 1987 (52 FR 34029).

**Expiration date of individual notice:** October 10, 1987.

**Local Public Document Room**  
location: White Plains Public Library,  
100 Martine Avenue, White Plains, New  
York, 10610.

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

**Date of amendment request:** June 10, 1987 as revised September 1 and 23, 1987

**Brief description of amendment request:** Revision to 125 volt dc battery profile.

**Date of publication of individual notice in Federal Register:** October 1, 1987 (52 FR 36849)

**Expiration date of individual notice:** November 2, 1987

**Local Public Document Room**  
location: Osterhout Free Library,  
Reference Department, 71 South  
Franklin Street, Wilkes-Barre,  
Pennsylvania 18701.

#### **NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.



For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Arizona Public Service Company, et al,** Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

*Date of application for amendments:* July 1, 1987, as supplemented by letter dated August 7, 1987.

*Brief description of amendments:* The amendments revised the technical specifications by renaming the CEA Symmetry Test Program to CEA Reactivity Program and expanding its note to allow either the CEA Symmetry Test or Worth Measurements of all full-length CEA groups to be performed following core reload or initial fuel load.

*Date of issuance:* September 29, 1987

*Effective date:* September 29, 1987

*Amendment Nos.:* 22, 12 and 2

*Facility Operating License Nos. NPF-41, NPF-51 and NPF-65:* Amendments change the Technical Specifications.

*Date of initial notice in Federal Register:* August 26, 1987 (52 FR 32190). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

**Commonwealth Edison Company,** Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

*Date of application for amendments:* August 29, 1986 and September 15, 1986, supplemented March 24, 1987.

*Brief description of amendments:* These amendments revise the Fire Protection License Conditions, remove the Fire Protection Technical Specifications, and replace the requirement to measure the source range neutron flux instrumentation discriminator bias curves.

The licensee's submittal dated March 24, 1987, was made as a result of NRC staff request to clarify the language of the September 15, 1987, submittal and does not contain substantive changes.

*Date of issuance:* September 9, 1987

*Effective date:* September 9, 1987

*Amendment Nos.:* 10 and 10

*Facility Operating License Nos. NPF-37 and NPF-66:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* October 22, 1986 (51 FR 37506) and November 19, 1986 (51 FR 41847). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* June 1, 1987

*Brief description of amendment:* The license amendment revises Technical Specification Section 4.10.D.1 to provide long-term acceptance criteria for the steam generator tubes with defects in the rolled region (bottom four inches of the tube) and to update the bases for this criteria. These changes will not affect repair criteria for flaw indications located outside of the roll expansion region. This license amendment will also modify the current requirement that "The plugging limit for sleeves will be determined prior to the 1987 refueling outage for Cycle 15," to, "The plugging limit or sleeves will be determined prior to the first refueling outage following sleeve installation," since, to date, no sleeves have been installed at the Haddam Neck Plant. This license amendment also revises Technical Specification Section 4.10.D.2 to delete the exclusion of tube row 37, column 73 in Steam Generator 2 from plugging, since this tube has subsequently been plugged during a mid-cycle shutdown in July, 1986.

*Date of issuance:* September 25, 1987

*Effective date:* September 25, 1987

*Amendment No.:* 96.

*Facility Operating License No. DPR-61:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 1, 1987 (52FR24546). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

**Consolidated Edison Company of New York Inc., Docket No. 50-03, Indian Point Unit No. 1 (IP-1), Buchanan, New York**

*Date of application for amendment:* December 19, 1985 as revised July 27, 1987.

*Brief description of amendment:* This amendment revises the Technical Specifications (TS) to assure that IP-1 requirements for the Radiological Protection Program are consistent with IP-2 requirements.

*Date of issuance:* October 2, 1987

*Effective Date:* October 2, 1987

*Amendment No.:* 37

*Provisional Operating License No. DPR-5:* This amendment revises the Technical Specifications.

*Date of initial notice in Federal Register:* August 26, 1987 (52 FR 32201). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* September 8, 1984, as supplemented May 20, 1987

*Brief description of amendments:* The amendments modify the Technical Specifications by adding requirements for the reactor vessel head vent system.

*Date of issuance:* October 2, 1987

*Effective date:* October 2, 1987

*Amendment Nos.:* 76 and 57

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* September 11, 1985 (50 FR 37078) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 1987

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223



**GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of application for amendment:* June 19, 1987 supplemented July 14, 1987 (partial response)

*Brief description of amendment:* This amendment describes organizational changes to the Corporate and Oyster Creek Site Organization of GPU Nuclear Corporation in the Administrative Controls Section of the Technical Specifications. The amendment also changes Section 6.10.1.c of the Technical Specifications to be consistent with 10CFR50.73 terminology. Matters related to Core Spray System Testable Check Valves will be the subject of a future action.

*Date of Issuance:* September 30, 1987

*Effective date:* September 30, 1987

*Amendment No.:* 117

*Facility Operating License No. DPR-50.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 12, 1987 (52 FR 29917) The July 14, 1987 letter provided the licensee's analysis concerning the no significant hazards. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 30, 1987

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of application for amendment:* December 18, 1986, which superseded a submittal dated April 5, 1985.

*Brief description of amendment:* The amendment revises the Duane Arnold Energy Center Technical Specifications as they relate to the identification of the appropriate containment purge and vent valves, to the operation of the containment purge and vent valves when the plant is at power and to the valve closure times.

*Date of issuance:* September 30, 1987

*Effective date:* September 30, 1987

*Amendment No.:* 146

*Facility Operating License No. DPR-49.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* April 8, 1987 (52 FR 11365) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* February 23, 1987

*Brief description of amendment:* The amendment revised the Technical Specifications by changing the description of fire detectors in the component cooling water pump room "A" and implementing certain name changes and correcting typographical errors for the charcoal filter units.

*Date of issuance:* October 1, 1987.

*Effective date:* October 1, 1987.

*Amendment No.:* 24

*Facility Operating License No. NPF-38.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* March 25, 1987 (52 FR 9576) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* June 23, 1987

*Brief description of amendment:* This amendment adds a requirement to the Maine Yankee Technical Specifications to process radioactive wastes for shipment to disposal facilities in accordance with Maine Yankee's Process Control Program (PCP).

*Date of issuance:* September 29, 1987

*Effective date:* 60 days from

September 29, 1987

*Amendment No.:* 101

*Facility Operating License No. DPR-36.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 12, 1987 (52 FR 29920). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1987

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

*Attorney for licensee:* J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.  
*NRC Project Director:* V. Nerses, Acting Director

**Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut**

*Date of application for amendment:* December 16, 1986 and supplemented January 30, 1987.

*Brief description of amendment:* The first change to the technical specifications involves higher set points for the main steam line radiation monitors and the steam tunnel ventilation radiation monitors to permit a hydrogen water chemistry pre-implementation test. The second change corrects two items issued in Amendment No. 2 to the technical specifications.

*Date of issuance:* September 29, 1987

*Effective date:* September 29, 1987

*Amendment No.:* 12

*Facility Operating License No. DPR-21.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 28, 1987 (52 FR 2884). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut**

*Date of application for amendment:* October 14, 1986 and July 21, 1987 (partial response)

*Brief description of amendment:* The change modified the Technical Specifications (TS) as follows: (1) a number of changes to the TS associated with post-TMI plant modifications as addressed in NRC's letter, "NUREG-0737 Technical Specifications (Generic Letter No. 83-37)," dated November 1, 1983, (2) Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SR) for the main steam radiation monitors which are added to existing TS 3/4.3.3.8, "Accident Monitoring Instrumentation," and (3) an instrument identified in TS Table 3.3-11 as the "Safety Valve Position Indicator Acoustic Flow Monitor" is now identified as "Safety Valve Position Indicator Acoustic Monitor." The TS associated with the Reactor Coolant



Level Monitor will be addressed in future correspondence.

*Date of issuance:* September 28, 1987

*Effective date:* September 28, 1987

*Amendment No.:* 120

*Facility Operating License No. DPR-65.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 12, 1987 (52 FR 29924)  
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut**

*Date of application for amendment:* July 14, 1987, (supplemented by letter dated July 31, 1987) and August 3, 1987.

*Brief description of amendment:* The change modified the Technical Specifications (TS) as follows: (1) a new TS 4.7.6.13.e requires periodic verification of control room inleakage, (2) a new TS 6.9.1.5d, "Annual Reports", requires reporting of pressurizer relief valve and safety valve failures and challenges and (3) a new TS 6.17, "Secondary Water Chemistry", specify requirements for the steam generator secondary water chemistry program.

In addition to the TS changes described above, the July 14, 1987 application also requests a change to the TS regarding steam generator tube degradation which will be addressed in a future licensing action.

*Date of issuance:* September 25, 1987

*Effective date:* Following initial entry into Mode 4 prior to operating in Cycle 9.

*Amendment No.:* 119

*Facility Operating License No. DPR-65.* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* August 26, 1987 (52 FR 32206)  
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* January 12, 1987

*Brief description of amendments:* These amendments revised the Technical Specifications relating to (1) reactor core thermal hydraulic stability and (2) operation with jet pump flow indication failures and jet pump operability surveillance requirements. When we issued Amendment Nos. 78 and 77 to Facility Operating License Nos. DPR-44 and DPR-56 on May 15, 1981, the transmittal letter contained a statement restricting the Peach Bottom units from operating at more than 50% of rated thermal power while in the single loop mode of operation pending resolution of postulated concerns about thermal hydraulic instability under high power-low flow conditions. This restriction was removed for Peach Bottom Unit 3 via the transmittal letter for Amendment No. 107 issued December 3, 1984. With issuance of these Amendments, the restriction of limiting Peach Bottom Unit 2 to 50% of rated thermal power while in the single loop mode is rescinded as unnecessary since the new requirements assure safe conditions for single loop operation. Implementation of the enclosed Technical Specifications will fully resolve generic issues B-19 (Thermal Hydraulic Stability) and B-59 (Single Loop Operation) for Peach Bottom, Units 2 and 3 as discussed in generic letters 86-02 and 86-09 issued January 23, 1986 and March 31, 1986, respectively.

*Date of issuance:* September 24, 1987

*Effective date:* September 24, 1987

*Amendments Nos.:* 125 and 128

*Facility Operating License Nos. DPR-44 and DPR-56:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* March 25, 1987 (52 FR 9578)  
Renoticed on May 20, 1987 (52 FR 18985)  
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Tennessee Valley Authority, Dockets Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama**

*Date of application for amendments:* September 27, 1984, as supplemented January 17, June 2, and December 10, 1986 (TS 201)

*Brief description of amendments:* The amendments change the Technical Specifications to show recent organizational changes, provide improvements and clarifications to the administrative controls section and reformat the administrative controls section to be more in line with Standard Technical Specifications.

*Date of Issuance:* September 11, 1987

*Effective Date:* September 11, 1987, and shall be implemented within 90 days

*Amendments Nos.:* 138, 134, and 109

*Facility Operating Licenses Nos. DPR-33, DPR-52, and DPR-68:*

Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* February 26, 1986 (51 FR 6830).  
The licensee's June 2 and December 10, 1986 letters provided minor administrative changes which did not significantly change the initial application nor the staff's no significant hazards considerations determination. Therefore, renoticing the application was not warranted. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room Location:* Athens Public Library, South Street Athens, Alabama 35611.

#### **NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10



CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action.

Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By November 20, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.



Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania**

*Date of Application for amendment:* September 14, 1987

*Brief description of amendment:* The amendment has been prepared and issued on an emergency basis to permit transfer from Operational Condition 4 to Operational Condition 5 for the purpose of continuation of the Unit 1 refueling operations.

*Date of Issuance:* September 23, 1987

*Effective Date:* September 14, 1987

*Amendment No.:* 71

*Facility Operating License No. NPF-14:* Amendment revised the Technical Specifications

*Public comments requested as to proposed no significant hazards consideration:* No

The Commission's related evaluation of the amendment, consultation with the State of Pennsylvania and final no significant hazards considerations determination are contained in a Safety Evaluation dated September 23, 1987.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037

*Local Public Document Room Location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18071.

*NRC Project Director:* Walter R. Butler

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of Application for amendments:* August 10, 1987

*Brief description of amendments:* The amendments changed the Technical Specifications to provide interim relief, while operating in cold shutdown conditions prior to any startup of the facility, from the requirement in Figure 6.2-2 of the Technical Specifications which requires that either the Plant Manager or the Superintendent-Operations shall hold a Senior Operator License.

*Date of Issuance:* September 29, 1987

*Effective Date:* September 29, 1987

*Amendment Nos.:* 126 and 129

*Facility Operating License Nos. DPR-44 and DPR-56:* Amendments revised the Technical Specifications

*Public comments requested as to proposed no significant hazards consideration:* Yes.

The Commission's related evaluation of the amendments, consultation with the State of Pennsylvania, State and public comments and final no significant hazards considerations determination are contained in a Safety Evaluation dated September 29, 1987.

*Attorney for licensee:* Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20036

*Local Public Document Room Location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

*NRC Project Director:* Walter R. Butler

Dated at Bethesda, Maryland this 15th day of October, 1987.

For the Nuclear Regulatory Commission

**Dennis M. Crutchfield,**

*Director, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation*

[Doc. 87-24234 Filed 10-20-87; 8:45 am]

BILLING CODE 7590-01-D

## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-8055]

**Issuer Delisting; Application To Withdraw From Listing and Registration; General Nutrition, Inc. (Common Stock, No Par Value)**

October 15, 1987.

General Nutrition, Incorporated ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock is also listed and actively traded on the New York Stock Exchange ("NYSE"). The Company plans to maintain the listing of their common stock on the NYSE and does not believe the public interest requires the duplicate listing of their common stock on the Exchange.

Any interested person may, on or before November 5, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-24405 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16057/October 15, 1987/811-3652]

**Application for an Order Under the Investment Company Act of 1940; Intramerica Variable Account A**

**AGENCY:** Securities and Exchange Commission ("SEC").



**ACTION:** Notice of application for an order under the Investment Company Act of 1940 ("The 1940 Act").

*Applicant:* Intramerica Variable Account A.

*Relevant 1940 Act Sections:* Order requested under section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company.

*Filing Date:* The application was filed on September 2, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 5th Street NW., Washington, DC 20540.

IntramERICA Variable Account A, One Blue Hill Plaza, P.O. Box 1722, Pearl River, New York, N.Y. 10965-8722.

**FOR FURTHER INFORMATION CONTACT:** Financial Analyst Denise M. Furey (202) 272-2067 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:**

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

*Applicant's Representations*

1. The Applicant is a segregated investment account established by Intramerica Life Insurance Company ("IntramERICA") under the laws of the state of New York on September 15, 1982. The Applicant is a unit investment trust registered under the 1940 Act.

2. Variable annuity contracts ("Contracts") were to be issued by Intramerica through the Applicant and purchased by individuals for retirement plans. Intramerica began offering the Contracts in December, 1983.

3. The sale of Contracts was not as successful as Intramerica had hoped and, consequently, the assets of the Applicant did not increase significantly as a result of investment through the

Contracts. In fact, only one Contract was ever sold.

4. The Board of Directors of Intramerica determined that continued efforts to effect new sales of the Contracts were not in the best interests of the Contractholder or Intramerica.

5. On March 19, 1986, the Board of Directors of Intramerica suspended indefinitely the offer and sale of its new Contracts.

6. The sole Contractholder of Contracts issued by Intramerica was informed of the determination to cease sales of new Contracts issued by Intramerica in an Important Notice dated April 7, 1986 and mailed on that date.

7. As described in the Important Notice, the sole Contractholder had the right, pursuant to sections 27(c) and 22(e) of the Act, to surrender his Contract and to receive payment of the accumulated value thereof less any applicable taxes or other charges up to the time that the Colonial Penn Series Trust (the "Trust") was liquidated, and the sole Contractholder chose to do so.

8. In a related action, the Shareholders of the Trust decided to liquidate the Trust and adopted a proposed Plan of Liquidation at a Special Meeting of Shareholders of the Trust on April 29, 1986.

9. After May 9, 1986, there was no remaining Intramerica Contractholder holding a beneficial interest in the Trust.

10. After the sole Intramerica Contractholder surrendered his Contract, the Applicant ceased to engage in any business other than that necessary for the winding up of its affairs.

11. All expenses related to deregistration under the Securities Act of 1933 and the Act have been paid by Intramerica.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 87-24406 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24474]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

October 15, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for

complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 9, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**New England Energy Incorporated (70-6513)**

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to section 6(a), 7, 9(a), 10, 12 and 13 and Rules 43, 90 and 91 thereunder.

NEEI is engaged in various activities relating to fuel supply for the NEES system. By order dated December 30, 1980 (HCAR No. 21862), NEEI was authorized to enter into an oil and gas exploration and development partnership with Dorchester Exploration, Inc. On December 29, 1981, NEEI terminated the partnership with Dorchester. As a result of its participation in the partnership, NEEI has interests with Dorchester in leases in 11 states, primarily in Louisiana, Texas, New Mexico and Wyoming.

By orders of December 27, 1982, December 31, 1983, and January 13, 1986 (NCAR Nos. 22801, 23194, and 23988, respectively), NEEI was authorized to invest respectively up to \$12 million, \$7 million and \$6 million in the further development of these properties. NEEI's current authorization expires on December 31, 1987.

NEEI states that it continues to maximize the return from these properties through selling, farming-out,



or participating in their further development. For these purposes, NEEI requests authority to invest up to \$4 million in such development during the period January 1, 1988 through December 31, 1991.

**Platte-Clay Electric Cooperative, Inc. (70-7446)**

Platte-Clay Electric Cooperative, Inc. ("Cooperative"), P.O. Box 129, Platte City, Missouri 64079, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, a Missouri corporation incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit, rural electric distribution cooperative. Its operations are confined to Platte, Clay, Ray, Clinton, Buchanan, and Caldwell counties in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 41 Platte. It sells electric energy to its consumer members.

Under Missouri law, the service area of rural electric cooperatives is limited to communities with populations no greater than 1,500 persons. Cooperative, therefore, created Platte Clay Electric Service Co., a wholly owned subsidiary, to enable it to serve Cooperative's members and new customers in areas which may cease to be rural due to annexation by municipalities. It is stated that the election of directors and the management of the affairs of Cooperative are effectively audited and regulated by REA.

**Arkansas Power & Light Company (70-7447)**

Arkansas Power & Light Company ("AP&L"), Capitol Tower, P.O. Box 551, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Associated Natural Gas Company ("Associated"), 405 Park Street, Blythville, Arkansas 72315, a gas utility subsidiary of AP&L, have filed a declaration pursuant to section 12(d) of the Act and Rule 44(c) thereunder.

AP&L proposes to dispose of its entire interest in Associated in compliance with the Commission's order (HCAR No. 17116, May 5, 1971), requiring Middle South to dispose of any direct or indirect interest therein. It is proposed that Southwestern Energy Company ("Southwestern") acquire the outstanding common stock and the subordinated note of Associated by affecting the cash merger of Associated and Arkansas Western Gas Company

("AWG"), a gas utility subsidiary of Southwestern, on the date of the closing. Associated will be merged with and into AWG, which will be the surviving corporation, the outstanding common stock of Associated will be canceled, the subordinated note of Associated will be assigned to AWG's parent, Southwestern, and AWG will cause the cash merger consideration of \$27,094,600 to be paid to AP&L. AWG intends to operate Associated as a division of AWG. As a consequence of the proposed merger, AP&L will have fully divested itself of its entire interest in the gas business of Associated, AWG will succeed to all the assets and liabilities of Associated, including all liabilities and obligations of Associated regarding its outstanding first mortgage bonds and the subordinated note. AWG, an expanded gas utility company, will continue to provide natural gas service to the former customers of Associated in the State of Arkansas and Missouri. The proposed disposition by AP&L of its interest in Associated does not contemplate any change in the current retail rate structure of Associated, over which the Arkansas Public Service Commission and the Public Service Commission of Missouri will have continuing jurisdiction.

**New Orleans Public Service Inc. (70-7448)**

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

NOPSI proposes to issue and sell, pursuant to a negotiated public offering or private placement with one or more institutional investors, up to \$50 million principal amount of one or more series of Rate Recovery General and Refunding Mortgage Bonds ("Bonds"). The Bonds will be sold at such price(s), will bear interest at such rate(s) and mature on such date(s) as will be determined at the time of sale. NOPSI proposes to use the proceeds from the issuance and sale of the Bonds for the financing or refinancing of its deferred costs associated with Unit No. 1 of System Energy Resources, Inc.'s Grand Gulf Nuclear Electric Station.

NOPSI states that because of its recent financial problems, an advance marketing effort may be required for a successful public offering or private placement of the Bonds. NOPSI therefore requests, pursuant to Rule 50(a)(5) under the Act, that the proposed issuance and sale of the Bonds be excepted from the competitive bidding

requirements of Rule 50 so that NOPSI can negotiate the terms of issuance and sale of any series of the Bonds. NOPSI may proceed to negotiate the terms and conditions of the Bonds.

**Ozark Electric Cooperative (70-7449)**

Ozark Electric Cooperative ("Cooperative"), Highway 39 North, P.O. Box 420, Mount Vernon, Missouri 65712, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, a Missouri corporation incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit, rural electric distribution cooperative. Its operations are confined to Lawrence, Barry, Christian, Dade, Greene, Jasper, Newton, Polk, and Stone counties in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 30, LAWRENCE. It sells electric energy to its consumer members.

Under Missouri law, the service area of rural electric cooperatives is limited to communities with populations no greater than 1,500 persons. Cooperative, therefore, created Ozark Electric Service Co., a wholly owned subsidiary, to enable it to serve Cooperative's members and new customers in areas which may cease to be rural due to annexation by municipalities. It is stated that the election of directors and the management of the affairs of Cooperative are effectively audited and regulated by REA.

**Arkansas Power & Light Company (70-7452)**

Arkansas Power & Light Company ("Arkansas"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, an operating subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

Arkansas has, pursuant to prior Commission orders entered into a fuel lease ("Fuel Lease"), dated as of November 18, 1981, with Ozark Fuel Corporation, a Delaware corporation ("Fuel Company"), under which Arkansas leases from the Fuel Company the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for the generation of electric energy by its Unit No. 2 of Arkansas Nuclear One Generating Station ("ANO") (HCAR Nos. 22272 and 24239, November 13, 1981 and November 19, 1986, respectively).

Under the terms of the Fuel Lease, the Fuel Company makes payments to all



suppliers, processors and manufacturers necessary to carry out the terms of Arkansas' contracts for Nuclear Fuel for NAO, or Arkansas makes such payments and is reimbursed by the Fuel Company. The maximum commitment of the Fuel Company to make payments for Nuclear Fuel is currently \$84 million at any one time outstanding, although payments of up to \$85 million may be made by the Fuel Company. The Fuel Company has financed these obligations under a Credit Agreement, dated as of November 18, 1981, as amended ("Credit Agreement"), between the Fuel Company and Swiss Bank Corporation, New York Branch ("Bank"). The term of the Credit Agreement is currently through December 1, 1987 ("Termination Date").

It is proposed to amend the Fuel Lease to provide for a termination date of December 1, 1988 to coincide with the proposed Termination Date of the Amended Credit Agreement, both agreements containing options to extend for one-year periods. All of the other terms and conditions in both agreements will remain the same, except for adjustments to the commitment and letter of credit fees. As required by the Fuel Lease, Arkansas would enter into a letter agreement consenting to the Fuel Company entering into the Amended Credit Agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 87-24407 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;  
Applications for Unlisted Trading  
Privileges and of Opportunity for  
Hearing; Midwest Stock Exchange, Inc.**

October 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Norsk Hydro A.S.

American Depository Shares, \$.25 Par Value (File No. 7-0618)

IBP Inc.

Common Stock, \$.05 Par Value (File No. 7-0619)

These securities are listed and registered on one or more other national securities exchange and is reported in

the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 87-24402 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;  
Applications for Unlisted Trading  
Privileges and of Opportunity for  
Hearing; Midwest Stock Exchange,  
Inc.**

October 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Nuveen California Municipal Value Fund Inc.

Common Stock, \$.01 Par Value (File No. 7-0620)

Nuveen New York Municipal Value Fund Inc.

Common Stock, \$.01 Par Value (File No. 7-0621)

Liggett Group Inc.

Common Stock, \$1.00 Par Value (File No. 7-0622)

Americus Trust for American Express Shares

Primes (File No. 7-0623)

Americus Trust for American Express Shares

Units (File No. 7-0624)

Americus Trust for Coca-Cola Shares

Primes (File No. 7-0625)

Americus Trust for Coca-Cola Shares

Units (File No. 7-0626)

Americus Trust for Dow Chemical

Shares

Primes (File No. 7-0627)

Americus Trust for Dow Chemical Shares

Units (File No. 7-0628)

Americus Trust for Ford Shares

Primes (File No. 7-0629)

Americus Trust for Ford Shares

Units (File No. 7-0630)

Americus Trust for G.E. Shares

Primes (File No. 7-0631)

Americus Trust for G.E. Shares

Units (File No. 7-0632)

Americus Trust for Mobil Shares

Primes (File No. 7-0633)

Americus Trust for Mobil Shares

Units (File No. 7-0634)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 87-24403 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25021; File No. SR-MSRB-87-9]

**Self-Regulatory Organizations;  
Municipal Securities Rulemaking  
Board; Order Approving Proposed  
Rule Change**

The Municipal Securities Rulemaking Board ("MSRB") submitted on August 20, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G-19 on suitability to require a dealer effecting a transaction in municipal securities with or for a discretionary account to make an affirmative determination, based upon information available from both the issuer and the customer, of the suitability of the transition.



Notice of the proposed rule change was given in Securities Exchange Act Release No. 24871 (September 2, 1987), 52 FR 34032. No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rule and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

Dated: October 14, 1987.

[FR Doc. 87-24399 Filed 10-20-87; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-25022; File No. SR-MSRB-87-8]

**Self-Regulatory Organizations;  
Municipal Securities Rulemaking  
Board; Order Approving Proposed  
Rule Change**

The Municipal Securities Rulemaking Board ("MSRB") submitted on August 20, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G-8 relating to books and records to be made by municipal securities brokers and dealers.

The proposed rule change revises the MSRB's rule G-8(f) to require municipal securities brokers and dealers selling new issue municipal securities, and complying with Commission rule 17a-3 under the Act, instead of MSRB rule G-8, to maintain records of delivery of G-32 disclosure documents, as required by rule G-8(a)(xiii).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24870 (52 FR 34031, September 9, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

Dated: October 14, 1987.

[FR Doc. 87-24400 Filed 10-20-87; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-25015; File No. SR-NYSE-87-27]

**Self-Regulatory Organizations;  
Proposed Rule Change by New York  
Stock Exchange, Inc.; Financial  
Responsibility and Procedures for  
Handling Error Trades**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

The proposed rule change consists of amendments to Rule 325(e) to increase the minimum level of the financial responsibility standard from \$50,000 to \$100,000 for members who execute orders on the Floor, to provide for additional alternative methods whereby members may elect to comply with the financial responsibility standard, to provide the value of an Exchange membership must equal or exceed \$150,000 when used to meet the financial responsibility standard, and amendments to Rule 134 to codify certain procedures for resolving error trades and to impose certain recordkeeping requirements in regard to error trades.

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

**(A) Self Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

**(1) Purpose**

The purpose of the proposed changes to Rule 325(e) is to assure that member financial responsibility requirements and standards are commensurate with today's levels of market activity, volatility, and order size. To achieve this objective, the Exchange proposes amendments to Rule 325(e) to increase the current financial responsibility requirement from \$50,000 to \$100,000 while providing broadened methods by which members can meet this standard. The Exchange is also proposing to amend Rule 134 to make clear that members may have trades as to which they have made an error cleared in the account of another member or member organization, provided such other member or member organization agrees. Rule 134 would also be amended to impose certain recordkeeping requirements on members who have their trades involving errors of \$3,000 or more cleared in the account of another member or member organization.

*Background to Rule 325(e).* Rule 325(e) was originally adopted in April, 1978<sup>1</sup> following amendments to the NYSE constitution which established new classes of members, i.e. lessees and annual members (physical access). As originally adopted, Rule 325(e) provided that members in these two membership classifications who executed orders on the Floor of the Exchange had to provide evidence of financial responsibility, by one of several means specified in the Rule, in the amount of \$25,000.

The Rule further provided that the sum designated in Rule 325(e) as a level of financial responsibility was to be available solely for monies due the Exchange, and to other members and member organizations resulting from losses arising out of closing contracts on the Floor of the Exchange.

In 1980 the financial responsibility standard in Rule 325(e) was increased from \$25,000 to the present \$50,000 level because it was deemed, at that time, that the higher standard was more appropriate as levels of trading activity were increasing on the Exchange. In addition, the financial responsibility standard was made applicable to all members who execute orders on the Floor, with "seat" owning members allowed to satisfy the requirement with their membership, to the extent the

<sup>1</sup> See Securities Exchange Act Release No. 14625, April 11, 1978, 43 FR 16581.



current value of the "seat" equalled or exceeded \$75,000. (See SR-NYSE-80-23).<sup>2</sup>

*Proposed Amendments to Rule 325(e).* The Exchange proposed amendments to Rule 325(e) to increase the financial responsibility standard from \$50,000 to \$100,000 and to provide several additional means whereby members can meet the standard. The Exchange notes that average trade size has increased since 1980, as well as overall market volume and volatility. Thus, the Exchange believes it is proper at this time to increase the financial responsibility standard to a level that is reasonable and appropriate in light of these changes in the market since the standard was last revised in 1980.

The Exchange also proposes to amend Rule 325(e) to add two additional means by which a member can evidence financial responsibility. The Rule currently provides that a member may meet this standard by means of a written guarantee, cash held by an independent escrow agent, a letter of credit issued by a bank or other party acceptable to the Exchange, or the value of an Exchange membership (provided such membership is worth at least \$75,000). The proposed amendments to Rule 325(e) would also permit a member to meet the financial responsibility standard by means of marketable securities with a value of at least \$100,000 (after appropriate haircuts, to be determined in the same manner as haircuts are determined for capital requirements) on deposit with an organization acceptable to the Exchange and readily available. In addition, a lessor would be permitted to pledge the value of his membership (up to an amount of at least \$100,000) to meet this lessee's financial responsibility requirement, provided the value of the lessor's membership is at least \$150,000. The concept that the value of a membership must be at least \$150,000 would also be applicable in the case of a "seat" owning member who is using the value of his membership to meet his own financial responsibility requirement.

*Procedures for Handling Uncompared Trades and Error Trades.* In addition to updating financial responsibility requirements set forth in Rule 325(e), the Exchange considers it important that there be appropriate procedures in place for the resolution of error trades which may occur on the Floor. The prompt and efficient resolution of error trades

through appropriate procedures complements the concept of financial responsibility standards and helps assure that contracts entered into on the Floor of the Exchange will be honored.

In most cases, when a member makes an error in executing trades on the Floor or in reporting trade data for comparison and clearance purposes, it will result in an uncompared trade. Rule 134 provides for certain methods by which clearing member organizations and members who are participants in transactions on the Floor can resolve uncompared trades and process these trades through comparison and clearance in a timely fashion. Under this rule, the "upstairs" offices of clearing firms, when notified of an uncompared trade by the clearing house, first attempt to resolve the uncompared item through appropriate back office procedures. When a clearing firm cannot resolve an item through this initial review, it will send a "QT" (questioned trade) notice to its executing member. The executing member is then responsible to research and resolve the "QT" with the contra party to the trade.

Uncompared trades which cannot be resolved by T+5 must be closed out by each side to the trade. This provision attempts to minimize the risk exposure of an open trade.

Over the years, an informal practice has evolved on the Floor which has proven to be efficient and economical in resolving QT and error trades, and which has effectively supplemented the formal procedures codified in Rule 134. Under this practice an executing broker may place an error trade in the account of another member or member organization, frequently the specialist in the stock in question. The amount of the error will be resolved by a "difference check", or by some other means mutually acceptable to the parties.

In some cases, an executing broker may not have an error account in his own name in which to place a trade as to which he has made an error. Thus, such an executing broker needs to rely on the services that another member or member organization may agree to provide in "taking in" an error trade. In other cases, an executing broker may have an error account in his own name, but, as to a particular error trade, the cost of recording the error and its correction may be greater than the amount of the error itself. In such a case, the specialist in the subject security may agree to (although he is certainly not required to) "take in" the error trade as one of the services he may provide his customers in helping resolve errors promptly and efficiently.

#### *Proposed Amendments to Rule 134.*

The Exchange believes it is appropriate at this time to make clear in Rule 134 that a member or member organization may agree to "take in" an error trade of another member or member organization. Accordingly, proposed new paragraph (g) of Rule 134 provides that a member may have a trade as to which he made an error cleared in an account in his own name or the account of his member organization, or an account in the name of another member or member organization, with the agreement of such other member or member organization.

To facilitate NYSE monitoring of error trades, proposed Rule 134(g) requires every member to make available to the Exchange, upon Exchange request, accurate and complete records of all error trades cleared in his own account, or in the error account of his associated member organization. Where error trades of \$3,000 or more are cleared in the error account of another member or member organization on the member's behalf, proposed Rule 134(g) requires the member who executed the trade to maintain accurate and complete records, which shall be available to the Exchange upon request, of the error trade, which shall include the following:

- (1) Audit trail date elements as prescribed by Rule 132;
- (2) The nature and amount of the error;
- (3) The member or member organization that cleared the error trade;
- (4) The means whereby the member resolved the amount of the error trade with the member or member organization who cleared the trade on his behalf;
- (5) The aggregate amount of liability incurred and outstanding in the error trade as of the time each such error trade entry is recorded as to error trades that have been cleared by other members or member organizations;
- (6) Such other information which the Exchange may require from time to time.

The Exchange believes that the provisions of proposed Rule 134(g) described above will facilitate resolution of error trades in a timely, efficient, and cost-effective manner.

Proper regulatory safeguards would be maintained by means of the recordkeeping requirements, which are intended to enable the Exchange to review error trade activity as appropriate.

#### *(2) Statutory Basis for the Proposed Rule Changes*

The proposed changes are consistent with the purposes of section 6(b)(5) of

<sup>2</sup> The Commission approved this increase in the NYSE's financial responsibility standard in Securities Exchange Act Release No. 17206, October 9, 1980, 45 FR 69082.



the Act in that they promote the protection of investors and the public interest by increasing the minimum level of financial responsibility that must be demonstrated by all members who execute orders on the Floor of the Exchange. Further, the proposed rule changes are also based on section 6(c)(3) of the Act, which provides that an exchange may condition membership on the ability of a registered broker or dealer to meet such standards of financial responsibility as may be prescribed by the rules of the Exchange.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule changes will impose any burden on competition not in furtherance with the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

In an Information Memorandum dated January 21, 1987 which was distributed to all members and member organizations the Exchange discussed several conceptual approaches aimed at enhancing financial responsibility standards, including the appropriateness of certain requirements for the resolution of error trades, and solicited written comments from the membership.

The Exchange bulletin basically discussed the following key concepts:

(1) An increase of the minimum financial responsibility requirement to \$100,000 from the present \$50,000 level;

(2) A broadening of the methods specified in Rule 325(e) by which a member can meet the financial responsibility standard by adding two additional methods;

(3) The possible adoption of a requirement that each member maintain his own error account or have access to the error account of his associated firm;

(4) The possible adoption of a requirement that a member include in his own account each error trade he is responsible for, except for errors where the loss is under \$3,000. This latter exception would have allowed members to continue to use a "difference check" procedure, or other procedures mutually agreeable to the executing broker and the member or member organization "taking in" an error trade, for minor errors. Under this suggested approach, only the member or member organization that originated an order would have been permitted to take in an error committed by an executing broker.

The Exchange also suggested an alternative procedure to mandatory

error accounts in its bulletin, whereby error accounts would not have been required, but members would have had to report to the Exchange errors above a specified amount that were "taken in" by another member or member organization, and the means used to resolve the error.

The Exchange received six written comments from members or member organizations in response to the Information Memo.

*Summary of comments received.* (1) A letter from Mr. Harry Buonocore, an independent broker, supported the concept of providing additional, alternative methods by which the Rule 325(e) financial responsibility requirement could be met, whether or not the dollar amount was increased.

(2) A letter from Mr. Alan Goldberg on behalf of Einhorn & Co., a specialist organization, expressed concern that an increased financial responsibility standard may have an impact on the clearing firm guarantees which are used as one of the alternative methods to meet the standard. Mr. Goldberg supported the concept of allowing lessors to pledge their seats on behalf of lessees, and suggested that leasing agreements make this arrangement clear.

In addition, Mr. Goldberg commented that all error trades should be placed in an error account and that the "difference check" procedure should be limited to errors of \$1,000 or less.

(3) Mr. A.L. Meentemeier, on behalf of Securities Settlement Corporation, a clearing firm, suggested that mandatory error accounts are not necessary as long as individual members who effect trades on which errors occur report them to the Exchange promptly. Further, he indicated that his firm would not be interested in carrying error accounts for individual brokers.

(4) A letter from Lawrence, O'Donnell & Co., a specialist firm, favored the concept of increasing the financial responsibility level. This commentator suggested that the error account discussion in the January Information Memo was "unrealistic and not consistent with current practice." This commentator also noted its view that some independent brokers may be unfairly using the prospect of giving unfavorable ratings on the Specialist Performance Evaluation Questionnaire (SPEQ) (a form which Floor brokers fill out quarterly evaluating the performance of specialist units they are asked to rate) as a means to put pressure on specialists to "take in" QTs.

(5) The Organization of Two Dollar Brokers submitted two statements. The first statement indicated that this

organization was considering the proposed increase in financial responsibility standards and would subsequently present additional thinking on this subject. The second statement recommended that all members and member firms be subject to a \$25,000 minimum capital requirement, that individual members be subject to a \$100,000 "error account guarantee", but that member firms be subject to an aggregated \$200,000 "error account guarantee". The second statement also discussed the possible creation of a "Floor Members Guarantee Fund" to facilitate members of the Organization of Two Dollar Brokers meeting Exchange financial responsibility requirements.

*Response to comments received.* For the most part, commentators supported the concept of raising the financial responsibility standard from \$50,000 to \$100,000. Accordingly, the Exchange is proposing to amend Rule 325(e) as discussed above, which amendment includes providing additional means by which members may meet the standard.

In light of comments received, and after additional internal analysis of the issue, the Exchange has determined not to adopt the suggested mandatory error account proposal, but rather to follow the alternative approach discussed in the January Information Memo, whereby members may place error trades in the account of another member or member organization, provided they maintain records of errors above a stated amount (\$3,000) handled in this fashion.

As to suggestions by Lawrence, O'Donnell & Co. that the prospect of brokers giving unfavorable SPEQ ratings may be a factor in influencing specialists to "take in" QTs, specifics from Lawrence, O'Donnell were sought. The firm subsequently informed Exchange staff that it was merely expressing its general perception, but that it was not raising allegations as to practices engaged in by any particular individual. As to the actual "taking in" of an error trade after it has been researched by the executing broker the Exchange believes that many specialist units view this activity as a reasonable service to be provided to their customers to facilitate the orderly functioning of the post-trade process. In any event, the Exchange believes that the proposed recordkeeping requirements in Rule 134(g) will provide an enhanced means for the Exchange to monitor possible abuses involving error trades.

As to raising minimum capital requirements to \$25,000, the Exchange notes that capital requirements are based on SEC regulations, and have



always been viewed by the Exchange as distinct from the evidence of financial responsibility requirements of NYSE Rule 325(e).

The Exchange does not believe it is appropriate to adopt a \$200,000 aggregate financial responsibility requirement for all members associated with a member organization. Such an aggregated requirement could conceivably result in lower overall financial responsibility standards than exist currently. For example, if five members were associated with the same member organization, each member today would have to meet a \$50,000 requirement, for an aggregate of \$250,000. Thus, the Exchange does not believe its objective of enhanced financial responsibility standards would be achieved by adopting the proposed \$200,000 aggregated standard.

As to the Organization of \$2 Broker's creation of a fund that would issue a master letter of credit to its members to enable them to meet the Rule 325(e) financial responsibility requirement, the Exchange believes that this approach may be meritorious, but ultimate approval would be subject to review of all implementing details and features of this plan, and a determination that the plan is comparable to other means, deemed acceptable under Rule 325(e), for providing letters of credit.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-87-27 and should be submitted by November 12, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 19, 1987.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 87-24401 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 15, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

- Banco Central, S.A.  
Capital Stock, 500 pestas Par Value (File No. 7-0635)
- Fieldcrest Cannon, Inc.  
Common Stock, \$1.00 Par Value (File No. 7-0636)
- Handleman Company  
Common Stock, \$1.00 Par Value (File No. 7-0637)
- Timeplex, Inc.  
Common Stock, \$0.01 Par Value (File No. 7-0638)
- Countrywide Credit Industries, Inc.  
Common Stock, \$0.05 Par Value (File No. 7-0639)
- Stone Container Corp.  
Common Stock, No Par Value (File No. 7-0640)
- Trinity Industries, Inc.  
Common Stock, \$1.00 Value (File No. 7-0641)
- Varco International, Inc.  
Common Stock, No Par Value (File No. 7-0642)
- AVEMCO Corporation  
Common Stock, \$0.10 Par Value (File No. 7-0643)
- Catalyst Energy Corporation

- Common Stock, \$0.10 Par Value (File No. 7-0644)
- Collins Food International Corp.  
Common Stock, \$0.10 Par Value (File No. 7-0645)
- Flightsafety International, Inc.  
Common Stock, \$0.10 Par Value (File No. 7-0646)
- Illinois Tool Works, Inc.  
Common Stock, No Par Value (File No. 7-0647)
- Mexico Fund, Inc.  
Common Stock, \$1.00 Par Value (File No. 7-0648)
- Advanced Systems, Inc.  
Common Stock, \$0.10 Par Value (File No. 7-0649)
- Armtek Corporation  
Common Stock, \$1.00 Par Value (File No. 7-0650)
- France Fund, Inc.  
Common Stock, \$0.01 Par Value (File No. 7-0651)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 87-24404 Filed 10-20-87; 8:45 am]

BILLING CODE 8010-01-M

### SMALL BUSINESS ADMINISTRATION

#### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a



notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340

**Title:** Nominate a Small Business Person or Advocate of the Year

**Frequency:** Annually

**Description of Respondents:** Trade associations, chambers of commerce and small business organizations are invited to nominate small business leaders for special small business advocacy awards. The information collected on individual state/district winners can be helpful in identifying resource people in the field.

**Annual Responses:** 400

**Annual Burden Hours:** 800

**Type of Request:** Reinstatement

**Title:** Lender Transcript of Account Form No. SBA 1149

**Frequency:** Lenders who request SBA to purchase their guaranty portion of a loan are required to furnish the Agency with a certified transcript of the loan account.

**Annual Responses:** 5,900

**Annual Burden Hours:** 5,900

**Type of Request:** Reinstatement

October 14, 1987.

William Cline,

Chief, Administrative Information Branch,  
Small Business Administration.

[FR Doc. 87-24408 Filed 10-20-87; 8:45 am]

BILLING CODE 8025-01-M

**Region IX Advisory Council; Public Meeting**

The U.S. Small Business Administration Region IX Advisory

Council, located in the geographical area of San Diego, will hold a public meeting at 10:00 a.m. on Tuesday, November 10, 1987, in the Federal Building, 880 Front Street, San Diego, California 92188, Room 2-S-14, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For Further information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, Room 4-S-29, San Diego, California 92188, (619) 557-7252.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1987.

[FR Doc. 87-24409 Filed 10-20-87; 8:45 am]

BILLING CODE 8025-01-M

**Region IV Advisory Council; Meeting**

The U.S. Small Business Administration Region IV Advisory Councils, located in the geographical areas of Miami, Florida, and Jacksonville, Florida, will hold a joint public meeting at 1:00 p.m., on Thursday, October 29, 1987, and adjourning at Noon, on Friday, October 30, 1987, at the Cocoa Beach Hilton, 1550 North Atlantic Avenue, Cocoa Beach, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 1320 S. Dixie Highway, Suite 501, Coral Gables, Florida 33146, telephone (305) 536-5521, or Douglas E. McAllister, District Director, U.S. Small Business Administration, 400 West Bay Street, Box 35067, Jacksonville, Florida 32202, telephone (904) 691-3103.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 9, 1987.

[FR Doc. 87-24410 Filed 10-20-87; 8:45 am]

BILLING CODE 8025-01-M

**Region VII Advisory Council; Public Meeting**

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting at 1:00 p.m. on Thursday, November 12, 1987 in the District Director's Office, SBA, 210 Walnut Street, Room 749 Federal Building, Des Moines, Iowa 50309, to begin the selection process of Des Moines District Small Business Person of the Year and

Advocates of the Year 1987, and to discuss such matters as may be presented by council members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Conrad Lawlor, District Director, U.S. Small Business Administration, at the address above, (515) 284-4567.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 9, 1987.

[FR Doc. 87-24411 Filed 10-21-87; 8:45 am]

BILLING CODE 8025-01-M

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition by the Blue Bird Body Company (Blue Bird) requesting that NHTSA exempt school bus driver seats from the impact requirements of Federal motor vehicle safety standard 222. The petitioner asserts that the restraining barrier behind the driver's seat and in front of the first designated seating position, is enough to give the front seat passenger the protection that he or she otherwise would get from a driver's seatback conforming with Standard 222. It is redundant and unnecessary, according to Blue Bird, to have both the restraining barrier and the driver seat requirements.

NHTSA is denying this petition because the existence of a restraining barrier separating the driver's seat from a designated passenger seat is irrelevant to the need for head impact protection when the driver's seat is in the head protection zone. The restraining barrier should help to prevent a child from being thrown entirely out of the seating area, but the barrier cannot prevent the child's head from being propelled beyond the restraining barrier in some crashes. When the child's head is propelled beyond the restraining barrier, it is important that any surfaces that could be contacted by the head afford some safety protection for the child's head.

**FOR FURTHER INFORMATION CONTACT:** Robert Williams, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400



Seventh Street SW., Washington, DC 20590, (202) 366-4919.

**SUPPLEMENTARY INFORMATION:** In a petition dated December 16, 1986, Blue Bird Body Company (Blue Bird or petitioner) requested that NHTSA specifically exempt school bus driver seats from the impact requirements of FMVSS 222, subparagraphs S5.3.1.2 and S5.3.1.3. These cited paragraphs set out head impact, acceleration, and force distribution limits for "contactable surfaces" in the "head protection zone."

Paragraph S5.3.1.1 states the dimensions of the head protection zone. For purposes of the Standard, any surface "on the front of a seat back or restraining barrier 3 inches or more below the top of the seat back or restraining barrier" falls outside the definition of contactable surface, and therefore outside the head protection zone. The manufacturers generally certify compliance with S5.3.1.2 and S5.3.1.3 by padding school bus seat backs, including the driver's seat back. Within the dimensions of the head protection zone, a surface generally is a "contactable surface" if it may be contacted by a head form described in Standard 222 (S6.6).

Additionally, paragraph S5.2 requires a school bus manufacturer to install a "restraining barrier" in front of any designated seating position that does not face the back of another passenger seat. This barrier is necessary for compartmentalization, a concept of insuring safety through the use of strong, well-padded seats with high seat backs, and better seat spacing, all to safely retain and cushion students during a crash.

Petitioner argues that this restraining barrier effectively isolates a passenger from the driver's compartment, and that S5.3.1.2 and S5.3.1.3 add costs to bus manufacture without supplying a corresponding safety benefit. The agency disagrees. Compartmentalization and head protection zones are separate aspects of school bus passenger protection. While compartmentalization keeps school bus passengers in a well-padded area, the head protection zone requirements seek to minimize head injuries within that area.

In a letter of March 1, 1979, Blue and Bird asked NHTSA to withdraw an earlier interpretation of Standard 222 which stated that when a driver's seat is a contactable surface in the head protection zone, the seat must not cause a head form test device to suffer any head impact, acceleration, or force distribution trauma in excess of the limits set out in the Standard. In continuing to maintain the validity of its

prior interpretation, NHTSA observed that while a restraining barrier may help keep a child within the confines of a designated seating position during an accident, the barrier cannot protect a child against a force impelling the child's head beyond the barrier. The agency continues to believe that there is a safety benefit in applying the performance criteria for head protection to any contactable surface (including a driver's seat) within the head protection zone. Absent any data that even suggest the contrary conclusion, NHTSA declines to exempt driver's seats from S5.3.1.2 and S5.3.1.3.

For the preceding reasons, NHTSA denies the Blue Bird petition that the agency exempt driver's seats from the requirements of Standard 222 as referenced above.

(15 U.S.C. 1392, 1407, 1410a) delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 15, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-24317 Filed 10-20-87; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[Department Circular—Public Debt Series—No. 29-87]

### Treasury Notes of October 31, 1989, Series AE-1989

Washington, October 15, 1987.

#### 1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately \$9,250,000,000 of United States securities, designated Treasury Notes of October 31, 1989, Series AE-1989 (CUSIP No. 912827 VL 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

#### 2. Description of Securities

2.1 The Notes will be dated November 2, 1987, and will accrue interest from that date, payable on a semiannual basis on April 30, 1988, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of \$5,000, \$10,000, \$100,000, and \$1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

#### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, October 21, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 20, 1987, and received no later than Monday, November 2, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the



yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a  $\frac{1}{8}$  of one percent increment, which results in an equivalent average accepted price close

to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

#### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

#### 5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Monday, November 2, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the

tender was submitted, which must be received from institutional investors no later than Thursday, October 29, 1987. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, November 2, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

#### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 87-24459 Filed 10-19-87; 11:42 pm]

BILLING CODE 4810-40-M



# Sunshine Act Meetings

Federal Register

Vol. 52, No. 203

Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 11:00 a.m., Monday, October 26, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 13, 1987.)
2. Proposed purchase of reader/sorter equipment within the Federal Reserve System.
3. Building proposals and budget regarding the Jacksonville Branch of the Federal Reserve Bank of Atlanta.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business

days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: October 16, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-24420 Filed 10-16-87; 5:00 pm]

BILLING CODE 8210-01-M

## MERIT SYSTEMS PROTECTION BOARD

**TIME AND DATE:** 1 p.m., Tuesday, October 27, 1987.

**PLACE:** Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

**STATUS:** Closed.

**MATTER TO BE CONSIDERED:** The adjudication of cases whose disposition involves solely the issues of jurisdiction and timeliness.

### CONTACT PERSON FOR ADDITIONAL INFORMATION:

Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Date: October 19, 1987.

Robert E. Taylor,

*Clerk of the Board.*

[FR Doc. 87-24471 Filed 10-19-87; 12:24 pm]

BILLING CODE 7400-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

**TIME AND DATE:** 9:30 a.m., Tuesday, October 27, 1987.

**PLACE:** Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

**STATUS:** The first four items are open to the public. The last item will be closed under Exemption 10 of the Government in the Sunshine Act.

### MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: North Star Aviation, Inc. PA-32-RT-300 and Alameda Aero Club, Cessna 172, Midair Collision, Oakland, California, March 31, 1987.
2. Highway Accident Report: Multiple Collision Between an Intercity Charter Bus, Passenger Car, and Transit Bus on State Route 495, North Bergen, New Jersey, October 9, 1986.
3. Recommendation to FAA concerning Failure of Main Landing Gear Spring Steel Struts on Cessna Model 182F Airplanes.
4. Recommendation to FAA regarding Fiber Composite Carburetor Floats and Automotive Gasoline in General Aviation Engines.
5. Opinion and Order: Administrator v. Plaus, Docket SE-7853; disposition of Administrator's motion to dismiss.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382-6525.

Bea Hardesty,

*Federal Register Liaison Officer.*

October 16, 1987.

[FR Doc. 87-24452 Filed 10-19-87; 12:02 pm]

BILLING CODE 7533-01-M



# Corrections

Federal Register

Vol. 52, No. 203

Wednesday, October 21, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 611 and 672

[Docket No. 61220-7033]

#### Foreign Fishing; Groundfish of the Gulf of Alaska

##### Correction

In rule document 87-23222 beginning on page 37463 in the issue of Wednesday, October 7, 1987, make the following correction:

On page 37463, in Table 1, in the entry for "Flounders", in the sixth column, "300" should read "0".

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 87-23; RMs-5289; 5458; 5863]

#### Radio Broadcasting Services; Cazenovia, Manlius, Rome, Schoharie, Voorheesville, NY

##### Correction

In rule document 87-23064 beginning on page 37460 in the issue of

Wednesday, October 7, 1987, make the following correction:

#### § 73.202 [Corrected]

On page 37461, in the first column, in the last paragraph, in the fifth line, "Channel 238B1" should read "Channel 239B1".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 6658

[ID-943-07-4220-10; I-4966]

#### Withdrawal of Land for Roadless Recreation Area; Idaho

##### Correction

In rule document 87-22450 appearing on page 36577 in the issue of Wednesday, September 30, 1987, make the following corrections:

1. In the first column of the page, in the land description, under T. 50 N., R. 5 E., under Sec. 4, in the fourth line, "NE 1/2" should read "NE 1/4."

2. In the sixth line, "E 1/2 SE 1/4 NW 1/4" should read "E 1/2 SE 1/4 SE 1/4 NW 1/4."

3. In the seventh line, "SW 1/4 NW 1/4 SE 1/4 NW 1/4" should read "SW 1/4 SE 1/4 SE 1/4 NW 1/4."

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 86-NM-211-AD; Amdt. 39-5736]

#### Airworthiness Directives; Airbus Industrie

##### Correction

In rule document 87-22721 beginning on page 36752 in the issue of Thursday, October 1, 1987, make the following corrections:

1. On page 36753, in the first column, in paragraph B.2, in the first line, "0.31" should read "0.331."

2. In the same column, in paragraph C., in the second line, "20" should read "250."

BILLING CODE 1505-01-D

## VETERANS ADMINISTRATION

### 38 CFR Part 36

#### Loan Guaranty; Collection of Late Fees and Interest Penalties on VA Funding Fees

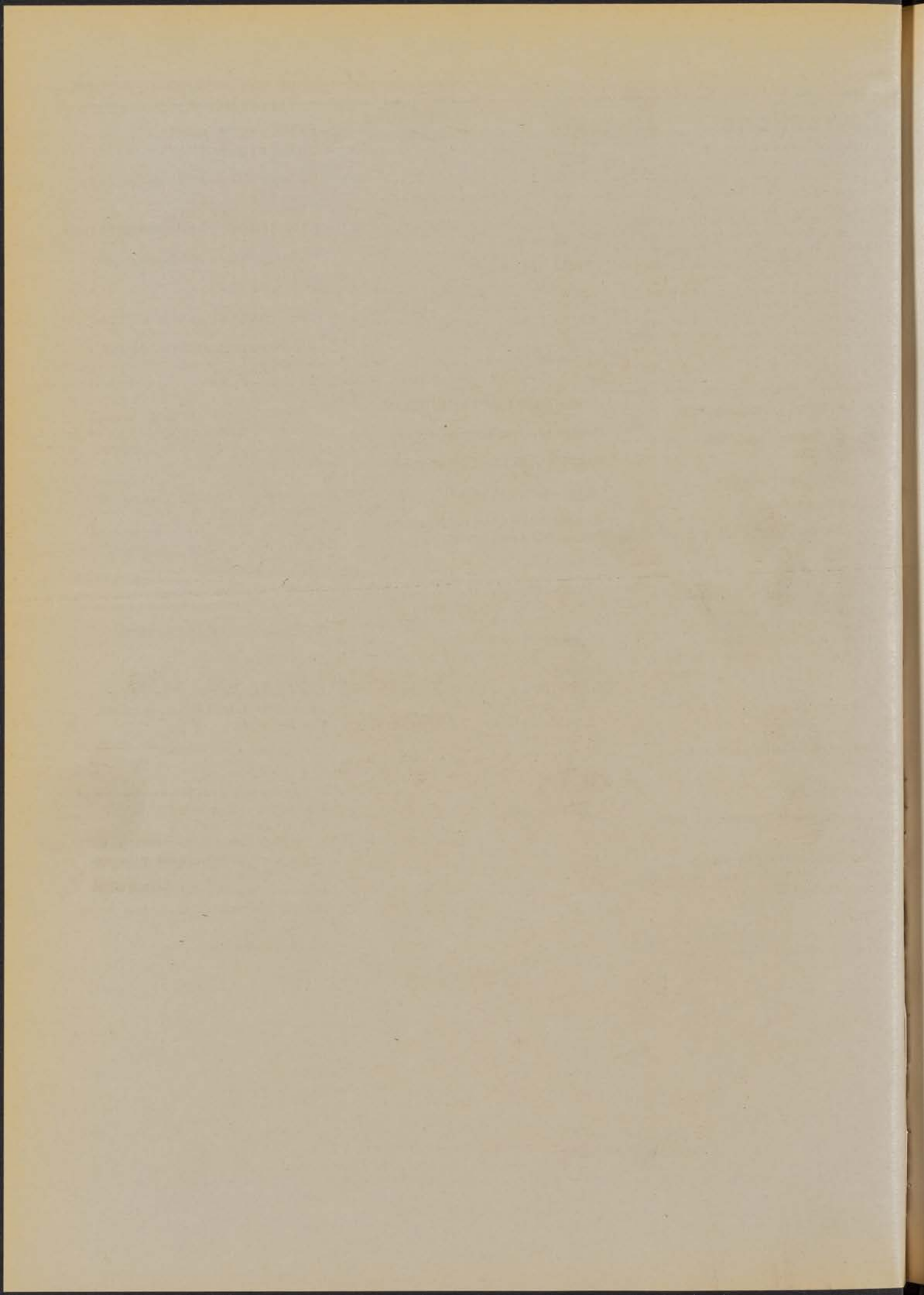
##### Correction

In proposed rule document 87-23617 beginning on page 37973 in the issue of Tuesday, October 13, 1987, make the following correction:

On page 37973, in the third column, under **SUPPLEMENTARY INFORMATION**, the 24th line should read, "Register. The interest charge is in addition to the 4 percent late charge, but the late charge is not".

BILLING CODE 1505-01-D







# FRIDAY

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Wednesday  
October 21, 1987

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## Part II

### Department of the Interior

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#### Bureau of Indian Affairs

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25 CFR Parts 211, 212, and 225  
Contracts for Prospecting and Mining on  
Indian Lands; Leasing of Allotted Lands  
for Mining; Oil and Gas and Geothermal  
Contracts; Proposed Rules



## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Parts 211, 212, and 225

## Contracts for Prospecting and Mining on Indian Lands; Leasing of Allotted Lands for Mining; Oil and Gas and Geothermal Contracts

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Withdrawal of final rule and republication as proposed rule.

**SUMMARY:** A final rulemaking document was published in the *Federal Register* on August 24, 1987 (52 FR 31916). A notice deferring the effective date to October 24, 1987, was published in the *Federal Register* on September 23, 1987 (52 FR 35702). In response to expressions of public concern, the Bureau of Indian Affairs has decided it would be in the public's interest to republish this document in this issue of the *Federal Register* as a proposed rule with a public comment period of 60 days. The proposed rule is published in the proposed rule section of this issue of the *Federal Register*. The rule will not become effective on October 24, 1987; the rule has been withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Joseph Johnston, Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, Mail Stop 340-SIB, 1951 Constitution Avenue NW., Washington, DC 20245; telephone (202) 343-3722.

W.P. Ragsdale,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 87-24074 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-02-M

## 25 CFR Parts 211, 212, and 225

## Contracts for Prospecting and Mining on Indian Lands; Leasing of Allotted Lands for Mining; Oil and Gas and Geothermal Contracts

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** In response to concerns expressed by the public, the Bureau of Indian Affairs has decided to republish as a proposed rule, the rule published as final on August 24, 1987 (52 FR 31916). The rule will not become effective on October 24, 1987 as scheduled (52 FR 35702) and public comments on the rule will be accepted. New rules and regulations implementing the Mineral Development Act of 1982 are proposed in this document. In addition, the

document proposes revising existing rules and regulations in 25 CFR Part 211 governing mining on tribal lands, and removing 25 CFR Part 212 which governs mining on allotted Indian lands. A new Part 225 is proposed to be added to govern oil and gas development contracts and leases from other mineral development. The regulations in existing Part 212 governing mineral development on allotted Indian lands are subsumed in the proposed regulations at Parts 211 and 225.

**DATE:** Comments on this proposed rulemaking must be received by December 21, 1987.

**ADDRESS:** Comments should be submitted to the Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, Mail Stop 340-SIB, 1951 Constitution Avenue, NW., Washington, DC 20245.

**FOR FURTHER INFORMATION CONTACT:** Don Aubertin or Dick Cramer Bornemann (303) 236-2660, Lakewood, Colorado, or Joseph Johnston (202) 343-3722, or Thornton Field, Office of the Solicitor (202) 343-9331, Washington, DC.

**SUPPLEMENTARY INFORMATION:** The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble.

Pursuant to the mandate in section 8 of the Indian Mineral Development Act (Act) (96 Stat. 1940; 25 U.S.C. 2107), the Bureau of Indian Affairs (BIA) published a notice of proposed rulemaking in the *Federal Register* on July 12, 1983 (48 FR 31978) intended to implement the 1982 Act. In addition to implementing the Act, the proposed rulemaking included a revision and reorganization of regulations governing mining and oil and gas leases adopted pursuant to the Act of May 11, 1938 (52 Stat. 347, 25 U.S.C. 396a-g), which governs the leasing of tribally-owned minerals, and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396), which governs the leasing of individually-owned minerals on allotted lands. The proposed rules, governing leasing under the 1938 and 1909 Acts, incorporated many changes suggested by interested parties in response to proposed rules published in 45 FR 53164 on August 11, 1980. In the July 12th document, the comment period was set for 60 days, ending September 12, 1983. However, on September 11, 1983, the comment period was extended for 30 additional days. A total of 67 separate comments was received from a

variety of sources, including Indian tribes and organizations, mining and oil and gas companies, trade organizations and Federal agencies.

**General Comments:** The majority of the commentators were of the opinion that the proposal provided a workable regulatory scheme for implementing the purposes of the 1982 Act. Most commentators offered recommendations for technical corrections or editorial changes, and in some cases, proposed substantive changes. However, some commentators offered strong objections to two aspects of the proposal which are discussed herein.

Several industry commentators expressed concern that, as proposed, the regulations would subject mining leases, entered into pursuant to the 1938 Act, to requirements which rightfully should only be applicable to minerals agreements under the 1982 Act, thereby diminishing rights which lessees currently possess. They contended that the 1982 Act is intended to give Indian mineral owners greater flexibility in negotiating mineral contracts, while at the same time allowing the procedures for negotiating leases pursuant to the 1938 Act to remain intact. They cited in support of this, section 6 of the 1982 Act, which provides that "(n)othing in this Act shall affect \* \* \* the Act of May 11, 1938 \* \* \*." They argued that the proposed regulations failed to distinguish between negotiated leases under the 1938 Act and those used as a part of a business arrangement sanctioned under the 1982 Act. The contention was made, for example, that some provisions of the regulations would subject existing 1938 Act leases to review of the entire lease, using the criteria established for the approval of mineral agreements under the 1982 Act, and urged that such provisions be deleted. Other examples were given which will be discussed below. The commentators ask that the BIA clearly explain its understanding of the relationship between leasing of minerals under the 1938 Act and negotiated leases under the 1982 Act.

The 1938 Act authorizes development of tribal mineral resources through a formalized lease conditioned upon competitive bidding for oil and gas development, royalty and rental provisions, limitations on acreage and a term of not more than ten (10) years and so long thereafter as minerals are produced in paying quantities.

Enactment of the 1982 Act removed the restriction which required competitive bidding for oil and gas agreements, thereby giving tribes full discretion on how their mineral



resources will be marketed. In addition, and very importantly, the restriction as to form of agreement (lease) was removed. As a result, tribes may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement. Additionally, the acreage limitation was removed and the term is not limited. Therefore, the 1982 Act gives full discretion for mineral development on tribal lands to the governing body of that tribe, subject to any limitation or provision contained in its constitution or charter, and a determination by the Secretary that the agreement is in the best interest of the tribe.

Common to both Acts is the requirement of Secretarial approval of a lease, in the instance of the 1938 Act; or other form of contractual agreement, in the instance of the 1982 Act. Tribes have the option to elect either act in conjunction with contemplated development.

It should be noted that, while tribes have the option to proceed under either Act, there are distinct differences between the two Acts. For example, oil and gas leases issued pursuant to the requirements of the 1938 Act are generally standardized leases executed on standard BIA forms. Such leases are subject to all of the requirements contained in regulations issued by the BIA, the Bureau of Land Management (BLM) and the Minerals Management Service (MMS). Similarly, any lease negotiated pursuant to the 1938 Act will be standardized to the extent that the lease must conform to the lease offer made in the sale notice, i.e., it must be for a term of not more than 10 years, absent production in paying quantities; it must provide for a fixed royalty and a specified rental; and the acreage leased must not exceed limitations imposed by regulations.

However, mineral agreements, including leases, approved under the 1982 Act, need not be subject to the same constraints as leases negotiated under the 1938 Act. For example, 1982 Act agreements are not limited to a maximum 10-year term, absent production in paying quantities. Also, there are no regulatory acreage limitations applicable to agreements under the 1982 Act.

In summary, it is clear that the provisions of the 1982 Act give tribes much more latitude and flexibility in the types of development agreements into which they may enter.

The authority under existing law for allottees or owners of undivided interests in Indian allotted lands to lease their lands for mining purposes is somewhat different than that granted

Indian tribes. The 1909 Act authorizes the Secretary to require competitive bidding in instances where the original allottee is deceased and the heirs either have not been determined or, if determined, cannot be located. As a matter of policy, since 1957, the Secretary has, by regulation, required that the competitive lease sale procedure be followed for all oil and gas leasing on allotted lands. However, on some limited occasions, the requirement has been waived upon request and allottees have been authorized to negotiate mining leases without competitive sales when the BIA has determined that, under the circumstances, a waiver of this requirement was in the best interest of the Indian owners.

Congress could have authorized allottees to negotiate mineral agreements when it passed the 1982 Act, but it did not. Instead, the 1982 Act only authorizes allottees to include their interests in a tribal mineral agreement, with the consent of the parties to the agreement, and with approval of the Secretary of the Interior.

In summary, the BIA understands the differences between leasing under the 1938 Act and the 1982 Act to be as follows:

(a) Tribes may lease minerals other than oil and gas, under either Act, except that contracts issued under the 1982 Act are to be subject to the procedures for review and approval by the Secretary set forth in section 4 of the Act as implemented by the rules in Subpart A of 25 CFR Part 211.

(b) Tribes may enter into oil and gas leases or agreements under either Act. Leases or agreements executed pursuant to the 1938 Act must first be offered for sale by competitive bidding. After the receipt of bids and their rejection, tribes may enter into negotiated leases or agreements with the approval of the Secretary.

If the agreement is negotiated under the 1938 Act, all provisions of that Act shall apply.

(c) Individually-owned Indian trust lands may be included in the 1982 Act tribal agreements with the consent of the parties and the approval of the Secretary, but allotted lands may not be included in such agreements which do not provide for participation of tribal lands.

(d) Allotted lands may continue to be leased pursuant to the 1909 Act.

(e) Oil and gas leases of allotted lands under the 1909 Act will continue to be made by competitive bidding, unless this requirement is waived by the Secretary of the Interior on a case-by-case basis to allow leasing by negotiations.

In response to the concern expressed by some industry commentators (i.e., that the BIA appears to be proposing that the requirements of the regulations intended to implement the 1982 Act, as set forth in Subpart A of Parts 211 and 225, apply to existing leases executed prior to the effective date of the new regulations), the BIA wishes to make clear its position that the procedures and requirements in the regulations pertaining to mineral agreements apply prospectively and only in those instances where the parties have elected to proceed under the 1982 Act. The basis of this conclusion is the absence in the statute or in the legislative history of the 1982 Act of any indication that Congress intended to retroactively impose the procedures for the Secretarial review and approval of mineral agreements on existing leases executed under the 1938 Act, or that such procedures should apply to new leases executed under the 1938 Act or the 1909 Act. Consequently, these rules are revised to eliminate or modify any provisions which may be ambiguous in this respect. These changes are discussed below in the analyses of comments received on each section of the proposed rules.

A number of industry commentators questioned the propriety of combining in one set of regulations rules governing mineral operations under the 1982 Act and revisions to existing rules governing operations under the 1938 Act and the 1909 Act. These commentators complain that the BIA failed to explain the reason for the changes affecting the leasing regulations under the 1938 Act. They recommended that the proposed rules be withdrawn and new proposed rules implementing the 1938 Act be promulgated separately.

The BIA acknowledges that the preamble to the proposed rules did not explain in detail the reasons for changes to the existing rules, and such explanations are provided herein in the section-by-section analysis of the rules. The BIA should have pointed out that these changes are based upon extensive comments received on proposed rules published in the *Federal Register* on August 11, 1980 (45 FR 53165). That proposal, in turn, constituted a republication of an April 5, 1977 proposal, (published in 42 FR 18083), with substantive revisions. As noted in the preamble to the April 1977 proposal, the initial impetus for revision of the regulatory scheme then in existence was provided by the Secretary of the Interior in a June 1974 decision on a petition by an Indian tribe to rescind certain leases on tribal lands. The Secretary concluded the decision with a directive to the



Solicitor to rewrite the regulations then in effect "to correct their present ambiguities" in order "to better fulfill my responsibility to assure the protection of Indian culture and environmental interests as well as to allow the maximum development of Indian natural resources." The effort to revise the BIA's mining regulations is of long duration.

Another general comment was that the proposed rules did not set forth rules governing mineral agreements for the development of geothermal resources on Indian lands. They noted also that it was unclear from reading the proposal which of the two parts governed geothermal operations, since both Part 211 and Part 225 contained references to geothermal. The BIA agrees with this criticism and in response has corrected Part 211 to make it clear that Part 211 governs minerals other than oil and gas and geothermal. In addition, Part 225 is revised to make it clear that geothermal operations are governed by its provisions. A description of a regulatory scheme for geothermal operations is set forth in the discussion of Part 225.

As a result of changes made in response to initial comments received, a number of sections have been moved to other locations in the Parts and the subsequent sections have been redesignated. In addition, some new sections have been added, and minor editorial changes have been made to correct grammatical errors and/or omissions. For the purposes of discussion, reference will be made to the section designations in the proposed rules.

## Discussion

### A. PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS AND GEOTHERMAL)

#### *Section 211.1 Purpose and scope.*

Two industry commentators objected to the statement in paragraph (a) of this section that the regulations are intended to ensure that Indian owners desiring to have their minerals developed receive "at least fair market value" for their resources. They contend that the concept of fair market value is highly subjective and its inclusion in the regulations could serve as a basis for later attempting to unjustifiably reform the terms of a contract, especially if the economic benefits from the contract are not as expected due to events or conditions which none of the parties to the agreement were aware of at the time of contracting. They contend that the function that might have been intended by this clause is covered by § 211.6(b)

which provided that a proposed agreement must be reviewed to determine if it is in the best interest of the tribe, and that this review includes an analysis of the potential economic return to the tribe. They ask that this entire clause be deleted. While the commentators may be correct that the uniqueness of these agreements and the difficulties with finding comparables for comparison purposes may make a fair market valuation difficult to perform, such a review is still desirable and essential for the approving official to make to assure the agreement is a prudent one. The Act itself envisions the reviewing official will perform an economic analysis when it is appropriate and feasible. Fair market value is a well established, and appropriate yardstick for determining whether the Indians involved in a minerals agreement are reviewing adequate compensation for the disposal of their non-renewable resource.

A number of industry commentators strongly objected to paragraph (c) which they contend unilaterally gives the BIA the right to require revisions to the provisions of any agreement (except the terms, royalties, rentals, and acreage) executed prior to the effective date of the new regulations. One commentator stated that once a contract has been approved, no terms can be amended except by agreement of all parties, and that the provision lacks any statutory authority and may be unconstitutional.

It is important to note that the economic bargain struck by the parties is not subject to unilateral change by rulemaking. The intent of this section is to permit the Department the needed flexibility to change the operational aspects of administering and supervising these contracts, over time, to conform with changing circumstances. For example, as experience gained with the bonding requirement, it may be appropriate to set minimums. Likewise, information collection requirements may change as experience dictates. This type of operational flexibility is essential.

The commentators also appear to have overlooked the fact that language in paragraph (c) has been included in the BIA's regulations since December 1957, if not earlier, and also has been a provision in the BIA's standard lease forms for a number of years. (See 25 CFR 211.18). Yet no instance is cited by the commentators wherein the BIA has revised the terms of a mineral contract to the detriment of a party to the contract through the process of promulgation of new or revised regulations. As to statutory authority for such a provision, section 8 of the 1982

Act directs the Secretary of the Interior to promulgate rules and regulations to implement the Act and to consult with national and regional organizations and tribes " \* \* \* both in the initial formulation of rules and regulations and any future revision or amendment of such rules and regulations." Had the Congress desired to exempt existing agreements from the application of revisions or amendments to the regulations, it could have done so in this section. The BIA interprets the absence of any such limitation as meaning that the Congress acquiesces in the long-standing practice of including such a provision in its rules and in standard lease forms. Therefore, the recommendation that this provision be deleted or modified to state that no regulations shall affect the terms of a contract without the agreement of all the parties is not accepted.

At the suggestion of the Office of Surface Mining Reclamation and Enforcement (OSMRE), a new paragraph (d) is added to indicate that mining operations for coal are governed by applicable regulations of that office. A new paragraph (e) has been added at the request of some tribes who criticized the regulations for failing to include a provision recognizing that Congress has granted tribes the authority to regulate mining operations on Indian lands under the Indian Reorganization Act and other acts.

#### *Section 211.3 Definitions.*

The BIA has accepted the suggestion by several commentators that all applicable definitions should be set forth in one location. All of the definitions located in § 211.33 in the proposed rules are now found in § 211.3. In addition, the definitions of "oil" and "gas" and "geothermal" which were included in § 211.3 have been moved.

A number of comments were received pertaining to the definition of "minerals agreement." Industry commentators urged that the definition be amended to make it clear that it does not apply to amendments of leases entered into pursuant to the 1938 and 1909 Acts. The proposed definition is patterned after the language in section 3(a) of the 1982 Act. That language, of course, does not contain the phrase "(other than a lease entered pursuant to the Act of May 11, 1938, and the Act of March 3, 1909)" after the word "leases." This phrase is added to make it clear that leases entered into pursuant to the 1982 Act are included in the definition of mineral agreements, and leases entered pursuant to the 1938 Act and the 1909 Act are excluded from the definition.



The industry commentators urge that the definition be amended to read " \* \* \* lease (other than a lease, or amendment thereto, entered into pursuant to the Act of May 11, 1938, and the Act of March 3, 1909) \* \* \*." As discussed *ante* under General Comments, the BIA believes that Congress intended the 1938 Act to remain as an alternative means whereby Indian mineral owners could dispose of their mineral resources, but there is nothing in the legislative history of the 1982 Act to indicate that Congress intended retroactively to apply the procedures for Secretarial review and approval in the 1982 Act to leases issued pursuant to the 1938 Act. The BIA believes the same reasoning applies to an amendment of a lease issued under the 1938 Act. In other words, the BIA agrees with one comment that "the 1982 Act does not transform 1938 Act leases into minerals agreements and there is no statutory basis to do so in the proposed regulations." Consequently, this recommended change has been accepted. Several commentators pointed out that although the term "contract" was used throughout the proposed regulations, the term was not defined. They suggested that "contract" should either not be used or a definition of the term should be included in the regulations.

It should be noted that "contract" is used in the text exclusively in Subpart C of the two parts which contain provisions applicable to mineral agreements under the 1982 Act, and competitive leases under the 1938 and the 1909 Acts. The term "contract" was chosen because of the need to find a commonly understood term which encompasses a mineral agreement (which includes "leases"), and competitive leases under the other Acts. The BIA believes that defining "contracts" is unnecessary if the public understands that it is simply a general term covering any type of document pertaining to the development of Indian mineral resources under any one of the three acts.

#### Subpart A—Minerals Agreements

##### Section 211.4 Authority to contract. (renumbered as § 211.5)

Two comments were received indicating that it will be detrimental to individual Indians owning allotted lands not to be able to enter into a lease or agreement pursuant to the 1982 Act without joining in tribal agreements. They suggest that many times these lands are not adjacent to tribal lands and the allottee does not have a right to negotiate under the proposed rules. The

commentators ask that additional provisions be added to this section to cover this situation. While the BIA sympathizes with this comment, it is nevertheless precluded from doing so in section 3(b) of the 1982 Act, which states that individual Indian owners of mineral interests " \* \* \* may include such resources in a tribal Minerals Agreement \* \* \*." The legislative history of the Act supports this position. Earlier versions of the bill which became the 1982 Act provide that tribes and individual Indians could enter into such agreements. However, the final bill was amended to delete this authorization as to allottees. Consequently, the requested amendment cannot be made.

An editorial change was made to paragraph (a).

##### Section 211.5 Negotiation procedures. (renumbered as § 211.6)

Comments on paragraph (b) were received from both Indian representatives and industry. The Indian commentators made suggestions for additional provisions. On the other hand, industry commentators recommended that the section be amended to provide only that no particular form of agreement is prescribed. They contend that a list of factors to be considered is unnecessary and that the likely effect will be a requirement that such factors be included in all agreements. The industry commentators misconstrued the purpose of this paragraph. This provision is included at the request of Indian representatives who reviewed a preliminary draft of the regulations and felt that some guidance should be provided tribes who were not familiar with these types of agreements and may wish to know the factors which need to be taken into consideration in the negotiating process. The provisions listed are those in a typical mining contract. It is not intended that these provisions should be construed as constituting a "model agreement," nor should they be regarded in any way as criteria which must be included in the agreement in order to obtain Secretarial approval. The criteria for approval of agreements is set forth in § 211.6. Consequently, the BIA rejects this argument and this paragraph has not been deleted. Two new subsections, (15) and (16), pertaining to a schedule of activities and descriptions of proposed abandonment and reclamation activities, which were suggested by commentators, have been added.

Paragraph (c) has been revised to change "should" to "may" in order to make it clear that consultation with

representatives of the Secretary prior to formal execution of an agreement is recommended, but such consultation is not a requirement for obtaining Secretarial review. Also, in response to a comment that § 211.5 contains no "requirements," this sentence is revised to read "requirements of the regulations in this Part." Paragraph (d) is revised to change "should" to "shall" inasmuch as the agreement must be forwarded to a representative of the Secretary for review.

##### Section 211.6 Approval of agreements. (renumbered as § 211.7)

Some commentators raised questions concerning the time limit of 180 days after submission, or 60 days after meeting National Environmental Protection Act (NEPA) requirements in paragraph (a), within which a proposed agreement must be approved or disapproved. They expressed concern that 180 days was too short a period within which to conduct the necessary technical review. They also asked whether these time frames include review by the tribe or does "after submission" refer only to receipt of the proposed review by the Secretary.

These time limits are prescribed by section 4(a) of the 1982 Act. The BIA interprets the phrase "after submission" in section 4(a) of the Act to mean after formal submission of an executed agreement to the Secretary for approval or disapproval. There is nothing in the legislative history to support a contrary intention on the part of Congress. Consequently, no change in paragraph (a) is being made.

Several commentators pointed out that paragraph (c) was inconsistent with § 211.37, in that it required that the written findings "shall" include an economic assessment, whereas § 211.37(a) states that an economic assessment, "where required," shall include the findings set forth. It is the BIA's intention that an economic assessment shall always be made of a proposed new minerals agreement. However, in many instances, amendments, supplements, and modifications of existing agreements may be proposed with very little, if any, effect on the economic aspects of the agreement and shall not require preparation of an economic assessment. Otherwise, the qualifying phrase, "where required," in § 211.37(a) would have no meaning. Accordingly, in order to correct any misunderstanding, the qualifier, "if needed," is used in § 211.7(c).

Numerous unfavorable comments were received from both tribal and



industry commentators on the concept of "fair and reasonable remuneration" as set forth in paragraphs (d) and (f). The principal objection to the concept is that it is unworkable and unrealistic. The commentators argue that the definition of "fair and reasonable remuneration" is too inflexible in that it requires the Secretary to find that the return to the Indians is not less than that received by non-Indians or the Federal Government in similar situations. Objectors felt there may not be similar contemporary mining ventures or federal projects which are truly comparable to the types of agreements likely to be developed for Indian lands, and in the absence of such agreements, the Secretary would be placed in an impossible situation.

Some commentators recommended that paragraphs (d) and (f) be deleted in their entirety and that paragraph (e) be amended to provide that the Secretary's determination of whether to approve or disapprove an agreement would be based solely on the written findings required by paragraph (c). Another commentator suggested that paragraphs (d), (e), and (f) were inconsistent with the objectives of the Act and should be revised to provide that the Secretary should take into consideration the factors set forth in paragraph (d), rather than make a determination that such conditions exist. The rationale is that the "determinations" required by section 4(b) of the Act should be based upon the environmental assessment and the economic assessment, if made, and that the Secretary's written findings shall be based upon such determinations.

The BIA has determined that the concept of "fair and reasonable remuneration" should be retained because it is an essential element in determining whether an agreement is in the best interest of the Indian owners, but the regulations setting forth the concept have been revised so that "fair and reasonable remuneration" is not another required written finding in addition to the environmental assessment and the economic assessment. Accordingly, appropriate revisions to paragraphs (d) and (f) have been made.

Paragraph (g) has been revised to require that a copy of the required written statement of the reasons why an agreement should be approved, or not approved, be sent to the Indian mineral owners, as required by the Act.

#### Subpart B—Mining Lease

The title of this subpart is changed to "Procedures for Competitive Leases," for clarity.

#### Section 211.20 Scope.

A number of commentators expressed some confusion as to what is meant to be covered by this subpart. They note that the phrase "through a competitive bidding procedure" under the 1938 Act implies that the competitive bidding procedures must be followed and that direct negotiation is not allowed. They asked whether or not the BIA intends that 1938 Act leases will continue to be issued via competitive bidding and also through negotiations. They also asked whether the BIA believes that any new lease that is negotiated falls automatically under the 1982 Act, inasmuch as the second sentence of this section states that leases may be negotiated "under the procedures in Subpart A," which are the procedures governing leasing under the 1982 Act.

The existing regulations of the BIA have provided, since 1957, in § 211.2, that leases for minerals other than oil and gas shall be advertised for sale by competitive bidding procedures unless written permission is granted to the Indian owners to directly negotiate for a lease. The BIA believes that this is a sound policy and should be continued. However, a provision setting forth this requirement was omitted from the initially proposed rules. Section 211.21(a) has been revised to make it clear that tribes may make leases under the 1938 Act, by direct negotiations with the written permission of the Secretary. In addition, the phrase "through competitive bidding procedure" has been deleted.

As explained, *ante*, it is the BIA's position that in enacting section 6, Congress intended that the requirements of the 1982 Act should apply only to mineral agreements entered into under that Act, and that leasing authorities under the 1938 Act and the 1909 Act are not affected by the 1982 Act. Consequently, to avoid any misunderstanding, the second sentence in § 211.20 has been deleted.

#### Section 211.21 Procedures for awarding leases.

A number of commentators pointed out that the phrase "prospecting and mining leases," which appears twice in paragraph (b), is confusing, as "prospecting leases" is not a term used elsewhere in the rules. This term has been eliminated.

The advertising procedure in paragraph (c)(2) would have required that the text of the advertisement include a complete description of the specific tracts to be offered. Upon further consideration, the BIA has concluded that because in many

instances a large number of tracts are included in a lease sale, this requirement would result in an unnecessary monetary burden on the public in the light of the high cost of publishing multiple descriptions of individual tracts in local newspapers. Printing costs in one known lease sale were in excess of \$6,000. Consequently, the BIA has elected the alternative, whereby specific descriptions of the tracts to be offered for sale will be available at the office of the Superintendent and will be sent to any person listed on the agency's list of persons who have asked to be informed of future lease sales.

Paragraph (c)(5), as proposed, requires a successful bidder to submit the balance of the bonus, the first year's rental, a \$25 filing fee, her/his share of the advertising costs, all bonds, and the executed leases, within 30 days after notification of the bid award. The rule authorizes the Superintendent to grant an extension of up to 30 days within which to file the executed lease. Some commentators recommended that the 30-day time limit be deleted and "a reasonable time specified by the Superintendent" be substituted for the 30-day limit. One industry commentator justified this proposed change on the grounds that, while the time limit is reasonable, if there are no terms to be negotiated under the bidding procedure, it is inappropriate for the bidder to face potential loss of her/his deposit if the inability to come to terms could be based on the action of the Government or the Indian mineral owner. This argument seems to be reasonable. However, it overlooks the fact that the time for submission only begins to run after it has been determined that the bid is satisfactory and the bidder is apprised of this fact. Thus, it is assumed that a notice to the bidder will not be given unless the proposed terms of the bid have been thoroughly examined and that no further adjustments will be required. However, even in the event that further negotiations may be required, the BIA believes a 30-day extension is sufficient. Consequently, the proposed deletion of any time limit has not been made.

Objections were voiced to the provision in paragraph (c)(5) which would give an Indian mineral owner the option to readvertise a forfeited lease, with a defaulting bidder required to pay the difference between her/his high bid and the high bid received at the sale, plus the cost of advertising for the subsequent sale. The objections were that this provision would be unfair, since it could result in an enormous and



unpredictable expense for a bidder where the failure to submit the executed lease and other items was not her/his fault. The suggestion was made that this penalty provision was not practical, inasmuch as subsequent bids in the second sale would likely be lower, not higher.

The BIA has concluded that the objections to this provision, particularly the comment that its effect might be lower bids, are legitimate, and accordingly the provision has been deleted. Defaulting bidders will be required to pay 25 percent of their bonus bid for the use and benefit of the Indian mineral owner.

Some industry commentators suggested that the provision in paragraph (d) that the Secretary shall not award a lease to any bidder until the consent of the Indian owner has been obtained should be deleted. They contend that this requirement is inconsistent with 25 CFR 211.21(c)(5) which requires that the successful bidder must file the completed lease within 30 days, which means the consent of the owner has been obtained. The commentators misconstrue the purpose of this requirement. As the courts have held on many occasions, although the Secretary's approval is required in order to lease Indian land, the Secretary is not the lessor and cannot grant a lease on her/his own authority. See: *Poafpybitty v. Shelly Oil Co.*, 390 U.S. 365 (1968). This provision is intended to enforce that holding. Consequently, even though an Indian mineral owner has consented to put her/his interest up for sale, the owner retains the right to decline to accept the highest bid. Similarly, even in the situation where an Indian owner has signed a lease of her/his interest, the owner has the right to withdraw consent to the lease at any time prior to the moment it is approved by the Secretary. For this reason, the suggested deletion was not accepted.

#### Section 211.22 Duration of leases.

One commentator questioned the implication in this section that the term of a lease entered into by means of the exercise of an option is to be measured from the date of the exercise of the option, and contended that the term should not begin to run until a lease has been fully approved. The argument is that, based upon the commentator's experience, it could take years after exercising an option before a lease is approved, and it is unfair to have the lease's term begin before all approvals have been obtained. This argument is persuasive and the section has been revised accordingly.

Numerous comments were received objecting to the proposed definition of the term "paying quantities" in paragraph (b). Sixteen commentators opposed use of the definition, for a variety of reasons, and urged that it be deleted. First, they pointed out that the definition is predicated on the proposition that "paying quantities" means that in order for a mining venture to have production in paying quantities, there must be a showing that every year of operations results in a profit to the lessee. They argue that this is unrealistic and impractical when applied to the mining of minerals other than oil and gas. Because of the nature of such operations, they contend, it is not uncommon for mines to operate for several years without a profit during the early development period, yet, during those years, the mine continues to be a worthwhile project. In addition, it is not uncommon to suspend production to permit a reduction in stockpiles of materials to an acceptable level. Strikes, delays, and disputes can operate to cause suspension of operations, resulting in a loss of profits in a given year. The objectors contend that given these factors, use of the proposed definition would force most mining companies to abandon any further development on Indian lands, since they would be unwilling to risk their investment in developing a mine, if they knew that one year of depressed prices or unprofitable operations might result in forfeiture of the mine.

One comment was that profitability to the operator is of no concern to the Indian lessor as long as royalties are paid. As long as any minimum royalties specified in the lease are paid the lessor, this commentator felt an operator should be deemed to be producing in "paying quantities." The suggestion was that if the lease failed to specify a minimum rental, it could be negotiated pursuant to § 211.22(d).

Finally, one commentator felt that strict adherence to the proposed definition would work to the detriment of Indian lessors, since it would prevent them from having the flexibility to agree that the lease should remain in effect during unprofitable years, with the expectation that it would be profitable within the foreseeable future.

After considering all the comments opposing the proposed definition, the BIA has concluded that the arguments presented against defining "paying quantities" are persuasive. Consequently, the proposed paragraph (b) has been deleted.

It was also decided that the requirement in paragraph (e) that

written evidence showing that minerals are being produced in paying quantities must be filed at the end of each fiscal year is an excessive burden on the public, especially since it is usually evident that production in paying quantities is occurring from other required reports and written proof of that fact is deemed unnecessary. Consequently, proposed paragraph (e) has been deleted.

Paragraphs (c) and (d) of this section which dealt with suspension of operations have been incorporated into a new section numbered 211.47 entitled, Suspension of Operations; Remedial Operations, and are further discussed there.

#### Section 211.23 Forms. (New)

The initially proposed rules failed to include the existing rules in 25 CFR 211.30 and 212.32 which require that leases, assignments, and other instruments shall be executed on forms prescribed by the Secretary. The BIA has concluded that, inasmuch as competitive leases will continue to be issued under the 1938 and the 1909 Acts, there is a need to include this requirement in the regulations. Consequently, until further notice, competitive leases, assignments, bonds, and permits should be executed on the appropriate form listed below:

Subject matter	Form No.
Assignments	BIA-5429
Bonds:	
Nationwide	BIA-5438
Statewide	BIA-5430
Lease bond	BIA-5427
Assignees Bond	BIA-5435
Lessee bond supported by government securities	BIA-5426
Evidence of authority of officers to execute papers	BIA-5428
Modification of lease mineral prospecting permits	BIA-5443
Oil and gas (non-exclusive and without option to lease)	BIA-5424
Mineral (non-exclusive and non-optional)	BIA-5436
Mineral (exclusive with option to lease)	BIA-5437
Leases	Lease forms may vary between area and agency offices
Sand, gravel, pumice and building stone permits:	
Short-term (6 months)	BIA-5434
Long-term	BIA-5433

#### Subpart C—General

##### Section 211.30 Scope.

There were no comments on this section.



### *Section 211.31 Authority and responsibility of the Authorized Officer.*

This section has been rewritten for clarity, and the title changed to—  
Authority and responsibility of the  
Bureau of Land Management.

### *Section 211.32 Authority and responsibility of the Minerals Management Service (MMS). (Refer to 48 FR 134, Page 31982)*

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents, while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

### *Section 211.33 Definitions.*

The definitions in this section have been consolidated in Section 211.3. A new section defining the responsibilities of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE) has been added.

### *Section 211.34 Approval of amendments.*

A number of commentators expressed concern that in drafting paragraph (a), the BIA intends that the criteria for approval of an amendment, modification or supplement to an agreement entered into pursuant to the 1982 Act, are also applicable to leases under the 1938 Act. The BIA recognizes that, as proposed, paragraph (a) seemed to imply that amendments, modifications, or supplements must meet the 1982 Act criteria, inasmuch as it stated that the contract, as modified, must meet " \* \* \* the criteria for approval set forth in § 211.6 or § 211.21." The purpose of this provision is to assure that amendments to contracts, whether leases entered into pursuant to the 1938 Act, or contracts (including leases) entered into under the 1982 Act, do not alter an approved contract to such a degree that it would no longer be in the Indian owner's best interests. This is what is meant by the references to "the criteria for approval." The provision has been amended to make it clear that 1982 Act contracts shall be reviewed under the criteria in § 211.6 and competitive leases are to be reviewed under the criteria in § 211.21.

The same objection was voiced with respect to paragraph (b), which the commentators felt could require substantial re-formation of a contract previously entered into, since it would

subject such contracts to the requirements of § 211.6. The commentators overlooked the fact that Section 8 of the 1982 Act provides that approval of mineral agreements pending before the Secretary, which were submitted prior to the effective date of the Act, shall not be delayed on the grounds that rules and regulations have not been promulgated. There were a number of mineral agreements pending on the date of enactment, which subsequently have been approved. Consequently, the reference to "criteria set forth in § 211.6" was intended to apply to these agreements. However, a reference was erroneously made to the entire "lease" meeting the criteria of § 211.6. This reference has been corrected to insert "contract" in place of "lease." The requirement that the amendment of the contract meet the criteria for approval in § 211.21 applies to amendments to 1938 Act leases.

Several commentators objected to the requirement that the exercise of options to lease Indian lands be approved by the Secretary pursuant to § 211.21, which governs the competitive bidding process. Upon further consideration, the BIA has determined that enforcement of this rule might infringe upon vested legal rights, and has deleted this requirement. However, it should be noted that the regulations require that in order to perfect a preference right to a lease in a prospecting permit, the permit must comply with all the laws and regulations applicable to mineral leases.

### *Section 211.35 Removal of restrictions.*

No changes were made to this section.

### *Section 211.36 Geological and geophysical permits.*

A number of commentators objected to paragraph (a)(2) which would prohibit provisions granting an option or preference right to a lease or other development contract in exploration permits. They point out that the current rules in § 211.27(a) allow such preference rights if they are specifically granted in the permit. They also felt a strict prohibition against preference rights in such permits would not be in the Indian mineral owners' best interests since it might deter companies from conducting exploration operations on Indian lands. The BIA agrees and has revised this paragraph to authorize Indian mineral agreements to specify preference rights in a prospecting permit when explicitly provided for in writing and with the approval of the Secretary and Indian mineral owner.

After considering the many objections to the proposed procedures for settlement of damages with surface

owners, set forth in paragraphs (a)(3) (i) through (iv), the BIA has concluded that these provisions, which were taken from oil and gas regulations governing operations on the Osage Reservation in Oklahoma, should not be included in the regulations because the circumstances which prevail on lands within the Osage Reservation are unique to that reservation and may not apply nationally. Consequently, three proposed procedures have been deleted.

The requirement in paragraph (a)(4), that a copy of all data collected by a permittee shall be forwarded to the Secretary and the Indian mineral owner, drew a negative reaction from industry commentators. The comments ranged from the suggestion that such data should not be forwarded to the Secretary or the Indian mineral owner until after the bidding process is completed, to a suggestion that data should never be forwarded to the Indian owner unless provided for in the permit. On the other hand, one Indian tribe suggested that the provision was inadequate because it did not specify that the permittee's interpretations of the raw data, as well as the data itself, should be forwarded to the Indian mineral owner.

The BIA appreciates industry concerns that the confidentiality of data which a permittee has collected should be protected to ensure her/his investment in the collection of such data. However, the BIA believes that the Indian owners of the mineral to be developed are entitled to have access to data which is essential in order for them to know the nature, extent and value of the mineral resource. Consequently, the suggestion that the regulations provide that only the Secretary is to receive copies of data resulting from permit operations is not acceptable. On the other hand, the BIA agrees with one commentator that requiring that a copy of the data must be forwarded to the Indian owner could have undesirable effects in that it could discourage companies from conducting exploration on Indian lands if the confidentiality of the data is compromised. Also, numerous people would receive copies of data for which they have no practical use. Accordingly, the BIA has concluded that this provision should be modified to require that copies of data be made available to the Indian mineral owner if the permit so requires. The intention is that the Indian owners and permittees negotiate as to what data shall be made available, and what procedures will be followed with respect to protecting its confidentiality.



Paragraph (a)(5), as proposed, required the permittee to obtain rights of ingress and egress from the surface owner. This provision would apply in situations where the Indian mineral owner may or may not be the surface owner. One industry commentator noted that her/his company had experienced difficulties in securing rights of ingress and egress because of the great number and diversity of surface ownerships—especially where there is a mixture of reservation and allotted lands. The commentator proposed alternative language which differentiates between instances where the Indian mineral owner is or is not the surface owner. Under this alternative, which the BIA has adopted, where the Indian mineral owner is the surface owner, such owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessees, etc., on her/his land, to allow the geological permittee to enter the land and conduct operations. Where the Indian mineral owner is not the surface owner, such owner shall assist the geological permittee to obtain any additional permits to the best of her/his ability.

Paragraph (b) provides that no permit is required to conduct geophysical or geological operations "on Indian lands" included in a contract entered into pursuant to Part 211, unless the contract *per se* requires a permit. The public should be aware that this provision does not apply in situations where the United States is the owner of the surface of the lands involved. In all such situations, a permit to conduct exploratory operations must be obtained from the Authorized Officer.

#### *Section 211.37 Economic assessments.*

This section contains the elements to be included in an economic assessment of a proposed minerals agreement. As proposed, these elements were to be mandatory "findings." One commentator stated that it was unclear whether or not each of the elements or criteria must be determined affirmatively in order for an agreement to be approved, or whether the Secretary must simply state whether or not each exists and then make a balanced overall assessment. The commentator urged the latter because, while an agreement might fail to meet one or more of the criteria, taken in its entirety, the agreement could be very advantageous to the Indian mineral owner.

One industry commentator urged that this section be deleted entirely because the 1982 Act does not anticipate anything as specific or detailed as the requirements of this section. He pointed

out that the Act merely requires the Secretary to "consider the potential economic return to the tribe." The BIA's reaction to this criticism is the same as the reaction to similar criticism of § 211.6, i.e., the proper approach to a proposed agreement should be to determine whether each element is present, and then make an overall determination whether the agreement is in the Indian owner's best interest. Accordingly, § 211.37(a) has been revised to provide that an economic assessment shall take into consideration the elements as set forth, and the requirement of written findings on each element has been deleted.

Several commentators objected to the requirements in § 211.37(d), that, in reviewing a negotiated contract, a finding must be made as to whether or not the negotiated contract "clearly" provides the Indian mineral owner with a "greater" share of the return on the production of her/his mineral than would be obtained through competitive bidding. They contend that this provision is unreasonable and impractical, and that such a determination cannot be made. The BIA agrees with this assessment. Accordingly, in line with the changes in paragraph (a) discussed above, "is likely to" is substituted for "clearly," and "equal to" is added to "greater than" in paragraph (d).

Section 211.37 (a)(6) has been deleted inasmuch as this provision is not appropriate to mining operations involving hard rock minerals.

Paragraph (b), which defined the term "geological and geophysical permit" has been deleted. This definition is now defined in § 211.3(o).

#### *Section 211.38 Environmental assessments.*

Minor editorial corrections and additions have been made to paragraph (a).

Industry commentators recommended that paragraph (b) be deleted on the grounds that it is superfluous, since the type of cultural/historical study required under the 1982 Act is directly tied to NEPA, which is referenced in paragraph (a). The BIA does not agree. Paragraph (b) implements the requirement in section 4(b) of the 1982 Act which provides that in approving or disapproving mineral agreements, the Secretary shall consider, among other things, the potential social and cultural effects of the agreement, as well as the potential effects on the environment. Acts of Congress such as the National Historic Preservation Act, the Archeological and Historic Preservation Act, and the Archeological Resources

Protection Act of 1979, require all federal agencies to take affirmative steps to preserve and protect districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. The requirements of the 1982 Act are thus in addition to those in earlier Acts, and are not a substitute for them. Consequently, paragraph (b) has been retained. Some editorial changes have been made.

#### *Section 211.39 Persons signing in a representative capacity.*

One commentator asked whether paragraph (b) is intended to require that each time a corporation proposes to acquire an interest in Indian minerals, it must file a statement containing all of the information required by the regulations; and commented that if this was the intent, the regulation would impose an unnecessary burden on industry. The BIA agrees that unless there is a significant change in the corporate structure, a corporation should not be required to file the same information repeatedly. Accordingly, paragraph (a) has been revised to require that corporations have on file a statement which complies with the regulation at the agency in which the Indian lands are located.

Industry commentators recommended that paragraph (c) be deleted on the grounds that it is arbitrary and capricious, since it would authorize the Secretary to require meaningless information to be submitted and subject a lessee to disapproval or cancellation for failure to furnish it. Furthermore, they add, the Secretary has other enforcement mechanisms short of something as harsh as cancellation.

The BIA has concluded that the information requirements of this section are repetitious in that both paragraph (b)(3) and (c) would have authorized the Secretary to require additional information as necessary. Accordingly, paragraph (b)(3) has been deleted. In addition, it is concluded that the last sentence of paragraph (c), which states that failure to furnish requested information will be grounds for cancellation or disapproval of a document, is unnecessary since the Secretary has the discretionary authority to decline to approve an instrument for failure of an applicant to comply with the Department's rules.

#### *Section 211.40 Bonds.*

Commentators felt that this section should identify the purpose of the bonds. Additional language has been added to



paragraph (b) in response to this concern.

Commentators asked who would be the "approving official" referred to in paragraph (b). The answer is either the Agency Superintendent or an Area Director.

Two industry commentators recommended that this section be deleted in its entirety. They contended that the requirement and manner of bonding should be left as a matter of negotiation between the parties with a review by the Secretary of the mechanism employed to insure that the interests of the Indian mineral owner are protected. They also suggested that a provision for self-bonding should be added.

The BIA recognizes that a contract or prospecting permit entered into through negotiations under the 1982 Act could contain bonding provisions agreed to by the parties. Similarly, the parties to the contract could agree to self-bonding in lieu of the bonding requirements of this section, provided the Secretary determines that the proposed bonding is in the Indian owner's best interest. However, this section also applies to leases entered into pursuant to the 1909 and the 1938 Acts, and the BIA believes that the rules must provide for bonding covering such leases. With respect to self-bonding, the BIA does not have sufficient information on which to base a determination that such bonding will adequately protect Indian mineral interests or to develop criteria for determining when such bonding is appropriate. Thus, self-bonding is not included in the regulations at the present time.

#### *Section 211.41 Manner of payments.*

No changes were made to this section. One commentator suggested that the phrase "or as provided by tribal constitution or by-laws" be added at the end. This suggested change was not accepted because, as set forth in § 211.1(e), discussed *ante*, a tribe organized pursuant to the Indian Reorganization Act of 1934 (and other acts) may adopt rules which supersede any of the regulations in this part, provided such rules are not in violation of federal laws.

#### *Section 211.42 Permission to start operations. (New)*

This is a new section and the section designations following it have been redesignated accordingly.

This section is a revision of existing 25 CFR 211.20. Paragraph (a) has been revised to provide that no operations on contracted areas may begin before the effective date of the mineral contract,

and to make it clear that the effective date of the contract is the date it is officially approved by the Secretary, or a designated representative. This provision should be construed as prohibiting any surface disturbance on the land prior to official approval of a contract.

Paragraph (b) of the existing rule has been amended to provide that approval of applications for permission to start operations is to be secured from the Authorized Officer in the Bureau of Land Management since that agency now performs this function.

#### *Section 211.43 Recordkeeping. (Old § 211.42)*

No changes were made to paragraph (a).

Industry commentators strenuously objected to the requirement in paragraph (b) that all records, including records regarding the financial structure of the prospector or operator, be made available for examination and reproduction by the Secretary, the Authorized Officer and tribal mineral owner. They contend that as long as the regulations provide that the Secretary may require an audit, there is no need to reproduce the records, and that such a requirement would greatly increase the risk that proprietary, competitive and financial information would be leaked to third parties. They argue that disclosure of such information would adversely affect an operator's contracts and competitive edge.

The BIA has concluded that the arguments against making all records available for reproduction are persuasive. Accordingly, paragraph (b) has been modified to provide that all records shall be made available to the Secretary upon request and has dropped the requirement that they be reproduced. Under this rule, an Indian mineral owner may request the Secretary to conduct an audit or cause an independent audit to be made. The audit will then be made available to the Indian mineral owner.

#### *Section 211.44 Mining contracts—individually-owned Indian lands. (Old § 211.43)*

Industry commentators recommended deletion of paragraph (b) requiring allotted lands of a deceased allottee to be offered for sale by competitive bidding. One commentator argued that although the 1909 Act, which requires competitive sales whenever heirs and devisees cannot be located or have not been determined, was not repealed, nevertheless an agreement approved pursuant to the 1982 Act should not be subject to the earlier statute's

requirement for competitive bidding. We agree, and have changed the regulations accordingly.

Paragraph (c) has been changed to improve technical accuracy.

As proposed, paragraph (d) of this section provided that the Secretary may approve a contract, where less than 100 percent of the undivided mineral interest is to be committed to the contract, if 51 percent or more of the mineral interest is committed. Upon further consideration, the BIA has concluded that a 51 percent margin is too small. Accordingly, the margin has been raised to 66 2/3 percent.

#### *Section 211.45 Assignments; overriding royalties and operating agreements. (Old § 211.44)*

Industry comments on paragraph (a) of this section strongly urged that it be modified to delete language to the effect that an assignment or sublease of an interest in a contract is not effective without the approval of the Indian owner. They contend that the existence of multiple owners of undivided interests in allotted lands should preclude this requirement on practical basis. One commentator expressed a concern that such open-ended approval authority on the part of Indian mineral owners could be abused and could be utilized to seek additional consideration as a condition to approving an assignment. Another commentator objected to the requirement that assignments be subject to the criteria of § 211.6 on the grounds that there is no justification for requiring a complex review process for an assignment, because the assignment will not affect the rights and obligations of the operator/lessee or the Indian mineral owner, or alter the economic or environmental aspects of the project.

The BIA has concluded that the requirement of Secretarial approval of all assignments or subleases will provide an adequate safeguard against interests in contracts being assigned or sublet to unqualified persons or companies without the necessity of requiring approval of the Indian mineral owners in every instance. At the same time, the BIA does not desire to preclude Indian mineral owners and lessees from including a requirement for lessor consent in the contract, should the parties agree to do so. Accordingly, this section has been revised to delete the mandatory requirement for approval by Indian owners. The BIA also agrees, as some commentators argued, that the review process set forth in § 211.6 is unnecessarily burdensome with respect to assignments. In addition, the requirement would be inconsistent with



the position the BIA has taken that the requirements of the 1982 Act will not apply to contracts entered into pursuant to the 1909 and 1938 Acts. Consequently, paragraph (a) has been revised to delete this requirement.

The BIA generally does not require lessees to attain approval of farmout or overriding royalty agreements. However, such agreements should be filed with the appropriate BIA agency office. Should such an agreement in reality be an assignment of interests changing the terms of the lease or minerals agreements, the burden is on the lessee to acquire the requisite consent of the mineral owners and the subsequent approval of the Secretary.

The BIA has concluded that paragraph (b) should be amended to require that a copy of any agreement creating overriding royalties or payments out of production be filed with the Secretary except in instances where the agreement is incorporated in an assignment which is required to be approved under paragraph (a), as provided in existing regulations in 25 CFR 211.26(d).

The BIA also has concluded that assignments of operating rights need not and will not be approved by the Secretary. However, in order to keep the Secretary apprised of the identity of the operator, the rule requires that such designations be filed with the Secretary.

#### *Section 211.46 Legal review. (Old)*

One commentator suggested that this section should be clarified to assure that submission of a proposed contract to a Field or Regional Solicitor's office for legal review will not result in any extension of the time currently established in the regulations for final Secretarial approval or disapproval. Inasmuch as the statutory time limits for review and approval or disapproval of a proposed minerals agreement are established by the 1982 Act, it is clear that the Department lacks any authority to extend the time frame through regulations, and no such extension should be implied by this section. The policy of the Department is that reviews of proposed mineral agreements for legal sufficiency will be bound by the statutory time limits in the 1982 Act. Upon reconsideration, the BIA has concluded that this section is unnecessary inasmuch as existing internal BIA guidelines will require legal review of mineral contracts. Therefore, this section is removed.

#### *Section 211.46 Termination and cancellation; enforcement of orders. (New)*

Industry commentators recommend that this section be deleted in its

entirety. They contend, first, that the handling of contract defaults should be matters for negotiation by the parties to the minerals agreement; that the parties should be free to utilize specified arbitration or judicial procedures as a means of resolving disputes, and that the mechanisms to accomplish this can be provided for in the agreement. One industry commentator suggested that the regulations must be re-written (a) to limit the Secretary's enforcement powers to violations of federal laws, regulations, and approved mining plans, and (b) to limit the Secretary's trustee duty to assisting Indian mineral owners, when necessary, to enforce their contract rights and remedies in the manner provided for in a mineral agreement. Finally, industry commentators assert that there is no statutory authority for the regulations in § 211.45 and § 211.47.

The answer to the first contention is that section 4(b) of the 1982 Act specifically directs the Secretary, in approving and disapproving a proposed agreement, to consider, among other things, " \* \* \* provisions for resolving disputes that may arise between the parties to the agreement."

Presumably, such provisions could include a proposed scheme for the inspection of operations and the resolution of disputes, and if the Secretary determines that the contract proposal would adequately protect the Indian mineral owners and did not violate applicable laws, such a scheme could be approved. Under those circumstances, provisions for enforcement and arbitration of disputes in the minerals agreement would supersede the BIA's regulations. However, the BIA cannot agree that §§ 211.45 and 211.47 should be deleted from the regulations for a number of reasons. These sections apply to operations on leases under the 1938 Act and the 1909 Act, as well as to mineral agreements under the 1982 Act.

Deletion of these sections would leave the Secretary without any regulatory procedure for enforcement of the terms of such leases. In addition, deletion of these provisions would mean that each time a proposed agreement is presented to the Secretary which either contained no provisions of enforcement or contained unacceptable provisions, approval of the agreement would have to be withheld until acceptable provisions were agreed to by the parties.

In regard to the statutory authority for the regulations, the BIA believes that there are several sources of such authority. For example, section 4(e) of the 1982 Act states that whereas the United States shall not be liable for

losses sustained by a tribe or individual Indian under an approved minerals agreement, " \* \* \* the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement." Section 8 of 1982 Act requires the Secretary to promulgate rules and regulations "to facilitate implementation of the Act." Similar provisions authorizing the Secretary to promulgate rules and regulations are found in the 1938 Act (25 U.S.C. 396d) and the 1909 Act (25 U.S.C. 396).

The existing rules of the BIA contain procedures for the enforcement of rules and regulations, orders of supervisory personnel, or the terms and conditions of contracts to conduct mining operations on Indian lands. The regulatory scheme set forth in this section is intended to strengthen these procedures.

In response to public comment, this section has been revised extensively to correct numerous objections and to include suggestions for improvement. The major change from the proposed regulations is the deletion of the opportunity for a hearing before the Superintendent. The BIA believes the 25 CFR Part 2 appeal procedures, now being revised, are adequate to safeguard the interests of affected parties without the delay that could occur by adding an additional 30-day hearing process. All parties will still have the opportunity to appeal and argue their position in writing under the Part 2 procedures. The Bureau also believes that immediately effective cessation orders are appropriate where there is an immediate and serious threat of damage to the environment or resources, and has thus retained this provision.

#### *Section 211.47 Suspension of operations; remedial operations.*

(This is a new section which has been added for the purpose of separating the provisions for suspension of operations from other provisions contained in 211.22—Duration of Leases.)

A number of commentators suggested that the provision of § 211.22 Duration of Leases, paragraph (c), limiting the period of suspension of operations to 60 days, was unsatisfactory. They suggested that this provision is unrealistic, since other situations, such as labor strikes, inability of a customer to receive the mineral, delays in obtaining permits, as well as economic considerations, could justify a suspension of operations for more than 60 days. Their suggestion was that this paragraph should be deleted



altogether, although one industry commentator suggested the maximum be increased to 180 days. On the other hand, a tribal attorney suggested that, based upon his experience, the 60-day limit is workable and commendable. He suggested that while an operator should not be penalized when diligently resuming work to correct damage from natural or accidental disasters, the operator should not be entitled to hold the leasehold indefinitely simply because it is seriously inconvenient to obtain production in paying quantities.

Industry commentators also asked that § 211.22 paragraph (d), providing for a minimum rental, be deleted for the reason that it imposes an economic burden on a lessee. The BIA does not accept this argument. A suspension of mining operations during the extended term of the lease means that the Indian mineral owners receive no royalty during the period of the suspension. The loss of the income provided by royalties clearly constitutes an economic burden on the Indian owner for which she/he should be compensated.

After considering these comments, it is obvious that suspensions of operations fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of operations for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land Management in 43 CFR 3473.4, 3483.3, and 3503.3-2 as applicable. In cases where a suspension of operating and producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of operations.

It has also been decided that the requirement for permission to suspend operating and producing requirements in the primary term of a contract, as proposed in § 211.22 paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

#### *Section 211.47 Penalties. (renumbered 211.48)*

A number of commentators suggested that this section be revised to provide that, to the extent the Indian mineral owner and the operator have created private rights and liabilities, the \$1,000 per day penalty and the other enforcement provisions of this section are not applicable. The BIA has accepted this proposal and has modified the section accordingly. The basis for this change is that, as proposed, this section would have established a regulatory maximum fine of \$1,000 per day. The BIA agrees that the parties should not be constrained by such a limitation if they wish to agree to a penalty in excess of \$1,000 per day or to some other penalty provision.

#### *Section 211.48 Appeals. (renumbered 211.49)*

The commentators on this section suggested that the appeal provisions should be modified to provide for an expedited system of appeals, and suggest a procedure whereby an appeal would be made directly from a decision of an Area Director to the Interior Board of Indian Appeals or to the Interior Board of Land Appeals. The comments did not include any arguments in support of this suggestion. However, the BIA has received numerous complaints from a variety of sources that the existing system of appeals is cumbersome. Also, others have complained that the existing rules and regulations in 25 CFR Part 2 neither adequately explain an appellant's rights to appeal nor do they set forth the procedural steps which must be followed to perfect the appeal in an easily understood manner. BIA is in the process of revising the Part 2 regulations to address these and other concerns.

#### *Section 211.49 Fees. (renumbered § 211.50)*

No comments were received on this section and no changes have been made.

#### *Section 211.50 No mineral agreements made with government employees. (renumbered § 211.51)*

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is barred by Federal law. See 18 U.S.C. 437.

### **B. Part 225—Oil and Gas and Geothermal Contracts**

#### **General Discussion**

As mentioned *ante* Part 225 has been revised to include specific references to geothermal operations. The BIA has decided that contracts for geothermal development shall be processed as mineral agreements under the requirements of Subpart A, for the reason that this type of contract does not lend itself to processing under standard forms used by the BIA for competitive oil and gas leasing. Accordingly, Subparts A and C have been revised to add appropriate references to geothermal.

#### *Section 225.1 Purpose and scope.*

Minor changes were made to paragraph (b) of this section and a new paragraph (e) was added to make the section conform to a similar addition in § 211.1.

A new § 225.3, *Definitions*, has been added to incorporate all of the definitions in this Part in one section, and §§ 225.21 and 225.43 have been eliminated. A new definition of the term "geothermal resources" has been added and definitions of the terms "minerals agreement," "operator," and "geological and geophysical permit" have been revised to include the term "geothermal" or "geothermal resources." In addition, the term "Indian mineral owner" has been deleted and a definition of "Indian owner" substituted in lieu thereof. This term is defined to include Indian tribes and individuals who own land or interests in oil and gas or geothermal resources.

### **Subpart A—Fluid Minerals Agreements**

#### *Section 225.20 Scope.*

The second sentence in this section has been deleted.

#### *Section 225.21 Authority to contract.*

This section has been revised to conform to § 211.5. Refer to the discussion of comments on § 211.5.

#### *Section 225.22 Negotiation procedures.*

This section is identical to § 211.6. For a discussion of the comments and the changes made, refer to that section.

#### *Section 225.23 Approval of agreements.*

This section is identical to § 211.7. Refer to that section for a discussion of the comments.



## Subpart B—Procedures for Competitive Oil and Gas Leases

### Section 225.30 Scope.

A minor editorial change was made to this section.

### Section 225.31 Procedures for awarding leases.

For a discussion of the changes made to this section refer to § 211.21.

### Section 225.32 Duration of leases.

A large number of commentators objected to the proposed definition in paragraph (b) of "paying quantities" which was fundamentally the same as the definition of this term in § 211.22. The basis for the objections was essentially the same, namely, that the definition is unnecessarily complex and includes expenses which should not be considered. The commentators urged that the BIA either revise this provision to eliminate a definition of "paying quantities," or adopt the definition used in federal oil and gas leases on public lands. The BIA has decided to include the definition found in the regulations for federal lands which has been in effect for several years.

The provisions for suspension of operations are addressed in § 225.54.

### Section 225.33 Rentals; minimum royalty; production royalty on leases.

Some commentators recommended changes in the procedure for determining "value" set forth in paragraph (d). However, because the Secretary has decided that rules and regulations governing how the value of the production of oil and gas on Indian land is to be determined, shall be prepared by the MMS and located in 30 CFR Chapter II, proposed paragraph (d) relating to the methods of determining value of production has been amended. Accordingly, a discussion of the comments on the proposed rule has been omitted.

Most of the comments received on this section were objections to paragraph (e). Industry commentators were concerned that the lessor's right to take excess gas could impair long-term gas sales contracts entered into by the lessee, and requested that the regulation be amended to prevent such an occurrence. The BIA agrees that this right should be available in the event that the gas taken is in excess of the lessee's requirements for lease operation and contracts. Accordingly, the *proviso* has been modified to require that the Superintendent must determine that the gas is available in sufficient quantities and is not subject to any pre-existing

sales contract, or that its disposition is not otherwise provided for in the lease.

Two Indian commentators complained that paragraph (d) relating to excess gas is a change to the existing regulation in 25 CFR 211.13(b), in that it would require payment for the excess gas, while the existing rule requires no payment. The commentators overlook the fact that the old rule limited use of such gas to schools or other tribally-owned buildings, whereas the new rule extends the right to any Indian mineral owner and puts no limitation on how the gas is to be used. The BIA believes these extensions justify the changes imposed by the regulation.

### Section 225.34 Contracts for subsurface storage of oil and gas.

There were no comments on this section and no changes made.

### Section 225.36 Forms.

Refer to § 211.23.

## Subpart C—General

### Section 225.40 Scope.

No changes were made to this section.

### Section 225.41 Authority and responsibility of the authorized officer.

Some editorial changes have been made to more clearly state the responsibilities assigned to the Authorized Officer resulting from Departmental reorganization, and the title changed to Authority and Responsibility of the Bureau of Land Management (BLM).

### Section 225.42 Authority and responsibility of the Minerals Management Service (MMS).

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the Section has been rewritten.

### Section 225.43 Definitions (Old).

As previously noted, the definitions in this section have been designated as a new § 225.3 and the subsequent sections are redesignated.

### Section 225.43 Approval of amendments to contracts. (New)

Some reference errors were corrected. Refer to § 211.34 for a discussion of the comments on this section.

### Section 225.44 Geological and geophysical permits.

The changes made to this section follow changes made to § 211.36.

### Section 225.45 Removal of restrictions.

No substantive changes were made to this section. Refer to § 211.35.

### Section 225.46 Oil and gas and geothermal contracts on individually-owned Indian lands.

This section parallels § 211.44. Refer to that section for a discussion of substantive comments.

### Section 225.47 Persons signing in a representative capacity.

Refer to § 211.39.

### Section 225.48 Economic assessments.

Refer to § 211.37.

### Section 225.49 Environmental assessments.

Refer to § 211.38.

### Section 225.50 Bonds.

Refer to § 211.40. The "approving official" referred to in paragraph (b) is the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), and those persons designated to act for him during his absence (Part 10 of the Bureau of Indian Affairs Manual).

### Section 225.51 Manner of payments.

Refer to § 211.41.

### Section 225.53 Assignments and overriding royalties.

Refer also to § 211.45. A number of industry commentators noted that it is unclear from the language of paragraph (a) whether the BIA intends to prohibit the assignment of operating rights, or merely that approval of such assignments by the Secretary is not required. They contend that assignments of operating rights serve an essential purpose in getting wells drilled, and that industry would strongly object to any prohibition of such assignments.

Indian commentators contend that the regulations should provide that the assignment of any interest in Indian oil and gas resources, including an assignment of operating rights, should be deemed invalid unless it has been approved by the Secretary with the consent of the Indian mineral owner.

After considering the issue, the BIA has concluded that designation of operators should be filed with the Secretary, but approval by the Secretary will not be required because there is no transfer of any leasehold interest.



*Section 225.54 Suspension of production; remedial workover/shut-in.*

This section, which authorized suspension of producing requirements under certain circumstances, has been extensively revised in response to critical comments and added as § 211.47 to the non-oil and gas and geothermal regulations, using principally the same language.

Several Indian commentators objected that paragraph (b) would require the consent of the Indian mineral owners to suspension of producing requirements for economic and marketing reasons only if such consent is specifically required in the contract. They contend that suspensions should never be granted without the consent of the Indian mineral owner, regardless of whether or not a consent provision is included in the contract. They also complained that paragraph (b) appears to provide that any lease, even a lease for a one year primary term, could be extended to ten years on the basis of a shut-in application based upon a lack of adequate marketing facilities or unsatisfactory marketing conditions. This assumption appears to be based upon the commentators' interpretation of the language in paragraph (b) to the effect that "such suspensions shall not exceed beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 \* \* \* or leases on allotted lands approved pursuant to the Act of March 3, 1909 \* \* \*."

Also, a number of Indian commentators objected to a \$2.50 per acre shut-in royalty, which they characterized as "inadequate and insignificant." One commentator suggested that the royalty should be no less than \$10.00 per acre. Industry commentators either objected to any payment of a shut-in royalty or contend that such royalty should be paid as an alternative to rentals, not in addition to rent. Several commentators noted that a regulatory requirement to pay any specified shut-in royalty could be at variance with provisions that an Indian mineral owner and an operator might agree upon in a mineral agreement. They point out that such a situation would be contrary to the intent of the 1982 Act, which was to grant Indian mineral owners and operators greater flexibility in reaching agreements.

After considering these comments, it is obvious that suspensions of production fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of production for remedial workover or repair of

mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land Management in 43 CFR 3162.3-2. In cases where a suspension of producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner, along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of production.

It has also been decided that the requirement for permission to suspend producing requirements in the primary term of a contract as proposed in paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently, this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

*Section 225.55 Unitization, communitization and well spacing agreements.*

Paragraph (a) has been amended to include the term "cooperative unit plan."

The BIA has concluded that requiring preparation of a written economic report as a part of the review process would impose an unnecessary administrative burden, inasmuch as the interests of the Indian oil and gas owner are considered in detail at the time a proposed contract is presented. Consequently, this requirement has been removed.

The purpose for pooling mineral interests is to promote conservation and efficient development of the resources. However, during the early 1980's, when speculation for oil and gas properties caused bidders to offer extremely high bonuses, many Indian mineral owners put pressure on BIA officials to either not act on, or disapprove, cooperative agreements for the sole purpose of causing the primary terms of leases to expire so the lands could be released and new bonuses received. The Department believes that the review process should be limited to the technical aspects of whether or not the proposed agreement provides for proper operational concerns. Paragraph (7) has been added to reduce the likelihood that officials will consider provisions other than the engineering and technical aspects of the agreement. It provides that approval of the agreement shall be

retroactive to the date of submittal to the Department, or the date of first production within the proposed unit, whichever is earlier, should the approval review process of a favorable technical finding extend beyond the primary term of the lease. However, paragraph (5) continues the policy that such agreements be submitted ninety (90) days prior to the earliest expiration date of any Indian contract in the unit.

In response to comments, a new paragraph (8) has been added segregating leases at the time of communitization into participating and non-participating areas, depending on the terms in the agreement. From experience, the BIA does not believe that this will happen often, when the surface area is the only item being considered. However, the BIA has, in more recent practice, required that communitization agreements be restricted to the specific strata or formations to be diligently developed, thus not holding the remaining nonproductive formations beyond the primary term of the lease by production from only one or two producing formations. This new provision incorporates that practice into the regulations.

A number of commentators pointed out the requirement in proposed paragraph (d) that an affidavit certifying that all Indian mineral owners "have been given notice" that approval of an agreement is being sought might be impossible to fulfill insofar as allotted Indian lands are concerned. The BIA has concluded this comment is valid and has modified the provision to require that the affidavit certify that reasonable efforts were made to secure the consent of the Indian oil and gas owners who have not given prior consent, by mailing them an invitation to join the unit. The invitation shall be sent to their last known mailing address.

The BIA has concluded that the existing practice of filing proposed unit agreements with the Superintendent should be formalized. Accordingly, this section has been amended. In addition, a new paragraph has been added providing that the Superintendent shall obtain the recommendations of the Authorized Officer for approval or disapproval of a proposed agreement, based upon the engineering and technical aspects of the agreement before taking action on the agreement. This addition also formalizes an existing procedure.

In response to comments, a new paragraph has been added requiring that each well within a cooperative unit must be drilled in conformity with an



acceptable well spacing program at a surveyed well location approved by the Authorized Officer. The provision also defines an acceptable program.

**Section 225.56 Inspection of premises; books and accounts.**

See also comments on § 211.43.

One Indian commentator recommended this section be amended to provide that individual Indian mineral owners, tribes, or their representatives shall have the right to request any and all data, and/or make an inspection of the records of the Minerals Management Service or the operator's records, in order to make an evaluation of the correctness of royalty accounting. One industry commentator contends that inspection of the contracted premises, books and accounts is controlled by the Federal Oil and Gas Royalty Management Act of January 12, 1982 (FOGRMA), (96 Stat. 2447; 30 U.S.C. 1701 *et seq.*).

It is the intention of the BIA that Indian mineral owners shall have the right to examine an operator's books and records pertaining to operations involving their mineral interest at any time during regular business hours, and agreement by a proposed operator to honor this right shall be a condition of approval of a contract by the Secretary. In this regard, section 103 of the Federal Oil and Gas Royalty Management Act specifically provides that any reports, records or information required by the Secretary for the purpose of implementing that Act or determining compliance with rules or orders issued pursuant to that Act, shall be made available for inspection and duplication upon request by an Indian tribe conducting an audit investigation.

**Section 225.57 Termination and cancellation; enforcement of orders.**

Refer to § 211.46.

**Section 225.58 Penalties.**

Refer also to § 211.47.

Several commentators contended that this section, as proposed, is inconsistent with civil penalty provisions in section 109 of FOGRMA and urged that the section be revised to conform to that Act. The thrust of their contention appears to be that section 109 sets the standards and procedures for the imposition of penalties involving oil and gas operations on Indian and Federal lands. The BIA believes this is an incorrect interpretation of FOGRMA, inasmuch as section 304 of that Act states unequivocally that the penalties and authorities in the Act are "supplemental to, and not in derogation of any penalties or authorities contained

in any other provision of law." The BIA construes this provision to mean that any authority previously granted by Congress under other mineral development Acts is unaffected by the enactment of FOGRMA and that the penalty provisions of that Act supplement, but do not replace, rules and regulations governing penalties promulgated under prior Acts. A new paragraph (d) has been added to make this point clear. Some commentators pointed out that the provision in this section to the effect that violators may be subject to a penalty of "not less than \$1,000 per violation per day" is inconsistent with the penalty in § 211.47 of "not more than \$1,000 per violation per day" and asked for clarification. It is the BIA's intention to set a maximum penalty of \$1,000 per violation per day, and this correction has been made. The BIA agrees with commentators who contend that a minimum penalty of \$1,000 per violation per day could be excessive in instances where minor violations were involved, whereas a maximum \$1,000 penalty will permit the Secretary to tailor the amount of the penalty to fit the seriousness of the violation.

Another comment was that the section should make it clear that, to the extent the parties create private specific liabilities in the contract itself, the terms of the contract should control the penalties to be imposed. The BIA agrees with this contention and has revised the section to provide that penalty provisions in an oil and gas contract approved by the Secretary, where inconsistent with the penalties provided for in this section, supersede the provisions on this section. It should be noted, however, that this should not be construed to mean that the Secretary will approve a contract which purports to exempt the parties from compliance with any specific penalties provided by Congress, such as FOGRMA.

**Section 225.59 Appeals.**

This section is identical to § 211.48. For a discussion of the comments and the changes made, refer to that section.

**Section 225.60 Fees.**

No changes have been made to this section.

**Section 225.61 Legal review. (Old)**

Refer to § 211.46 (Old).

**Section 225.61 No oil and gas agreements made with Government employees (New)**

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or

being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is prohibited by federal law. See 18 U.S.C. 437.

**Section 225.62 Sales contracts, division orders and other division of interest documents.**

No changes have been made to this section.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets; and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The changes made by the proposed rulemaking reduce the regulatory burden imposed on such persons in several instances. The proposed rulemaking does increase the filing fee which must accompany each permit, lease, sublease or other contract, or an assignment or surrender thereof from \$10 to \$25. This increase is necessary to partially compensate the United States for its costs of processing those documents, but is not an amount that should discourage or prevent any small business from contracting to engage in mineral development on Indian lands.

The changes made by the proposed rulemaking are for the purpose of streamlining and updating existing leasing procedures, and clarifying the meaning and intent of those procedures. These changes constitute an administrative action and do not impact on the physical environment. The approval of contracts will require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in the initially proposed rulemaking which were made, the BIA



considered the changes to be of such minor variation and degree that the impacts were deemed equal to or less than the changes made by the initially proposed rulemaking. The Department of the Interior has determined therefore that there will be no significant impact to the human environment.

The Office of Management and Budget (OMB) has informed the Department of the Interior that the information collections contained in 25 CFR Part 211 and Part 225 need not be reviewed by them under the Paperwork Reduction Act, Pub. L. 95-511, (44 U.S.C. 3501 *et seq.*).

This proposed rule is republished in exercise of the authority delegated by the Secretary of the Department of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

#### List of Subjects

##### 25 CFR Part 211

Indians—Lands, Mineral resources, Mines, Exploration.

##### 25 CFR Part 212

Indians—Lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

##### 25 CFR Part 225

Indians—Lands, Oil and gas exploration.

For the reasons set out in the preamble, Chapter I of Title 25 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 211 is revised to read as follows:

#### **PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS AND GEOTHERMAL)**

##### Sec.

- 211.1 Purpose and scope.
- 211.2 Information collection.
- 211.3 Definitions.

##### **Subpart A—Minerals Agreements**

- 211.4 Scope.
- 211.5 Authority to contract.
- 211.6 Negotiation procedures.
- 211.7 Approval of agreements.

##### **Subpart B—Procedures for Competitive Leases**

- 211.20 Scope.
- 211.21 Procedures for awarding leases.
- 211.22 Duration of leases.
- 211.23 Forms.

##### **Subpart C—General**

- 211.30 Scope.
- 211.31 Authority and responsibility of the Bureau of Land Management.

##### Sec.

- 211.32 Authority and responsibility of the Minerals Management Service (MMS).
- 211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).
- 211.34 Approval of amendments.
- 211.35 Removal of restrictions.
- 211.36 Geological and geophysical permits.
- 211.37 Economic assessments.
- 211.38 Environmental assessments.
- 211.39 Persons signing in a representative capacity.
- 211.40 Bonds.
- 211.41 Manner of payments.
- 211.42 Permission to start operations.
- 211.43 Recordkeeping.
- 211.44 Mining contracts—individually-owned Indian lands.
- 211.45 Assignments; overriding royalties and operating agreements.
- 211.46 Termination and cancellation; enforcement of orders.
- 211.47 Suspension of operations; remedial operations.
- 211.48 Penalties.
- 211.49 Appeals.
- 211.50 Fees.
- 211.51 No mineral agreements made with Government employees.

**Authority:** Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a-g, 476, 477, 509); Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); Sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415); Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 880); Secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 988, 25 U.S.C. 476 and 477); Act of August 11, 1978 (92 Stat. 469, 42 U.S.C. 1996); Sec. 102, Act of January 1, 1970 (83 Stat. 852, 42 Stat. 4332); Act of December 22, 1982 (96 Stat. 1938; 25 U.S.C. 2101 thru 2108).

##### **§ 211.1 Purpose and scope.**

(a) The regulations in this part govern contracts for prospecting and mining of Indian-owned minerals, other than oil and gas and geothermal. Subpart A—Minerals Agreements establishes the procedures for the approval of minerals agreements entered into pursuant to the Indian Mineral Development Act of 1982 (96 Stat. 1938; 25 U.S.C. 2101-2108).

Subpart B—Procedures for Competitive Leases contains regulations governing procedures for the issuance of competitive mining leases on tribal and allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a-g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to the issuance of contracts for prospecting and mining under both Subparts A and B. These regulations are intended to ensure that Indian owners desiring to have their minerals developed receive at least fair and reasonable remuneration for the disposition of their mineral resources; to ensure that any adverse environmental and cultural impacts resulting from such development are minimized, and to permit Indian mineral

owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in the development of their mineral resources.

(b) The regulations in this part do not affect leasing and mining governed by the regulations in 25 CFR Parts 213, 214, 215, and 30 CFR Chap. VII for coal operations.

(c) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, the royalty rate, rental, or acreage unless agreed to by all parties to the contract.

(d) Exploration and mining operations for minerals (except coal) on Indian lands are subject to the regulations in 43 CFR Group 3500 and 25 CFR 216 Subpart A. Exploration and mining operations for coal on Indian lands are subject to the regulations in 25 CFR Part 216 Subparts A and B, and applicable regulations in 43 CFR Group 3400 and 30 CFR Part 750.

(e) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 461-479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501-509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

##### **§ 211.2 Information collection.**

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 211 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*)

##### **§ 211.3 Definitions.**

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Act" means the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

(b) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered into pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), or other agreement, or amendment,



supplement, or other modification of such agreement, providing for the exploration, or extraction, processing, or other development of minerals, or providing for the sale or disposition of the production or products of such mineral resources.

(c) "Secretary" means the Secretary of the Interior or an authorized representative.

(d) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(e) "Superintendent" means a Bureau of Indian Affairs Superintendent or the authorized Bureau representative having immediate jurisdiction over the minerals covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(f) "Bureau" means the Bureau of Indian Affairs.

(g) "Indian mineral owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in land, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

(h) "Minerals" includes both metalliferous and nonmetalliferous minerals, except oil and gas and geothermal, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

(i) "Mining" means the science, technique, and business of mineral development, including opencast, underground work, and in situ leaching, directed to severance and treatment of minerals; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the sale and removal of such mineral exceeds 5,000 cubic yards in any given year.

(j) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described.

(k) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(l) "Director" means the Director, Office of Surface Mining Reclamation and Enforcement; or the Director's representative.

(m) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a minerals agreement to mine for Indian-owned minerals.

(n) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into, a mineral agreement to prospect or explore for Indian-owned minerals.

(o) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, which owns land.

(p) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of minerals on the lands.

## Subpart A—Minerals Agreements

### § 211.4 Scope.

The regulations in this Subpart govern the procedures for obtaining approval of minerals agreements for the exploration, development and sale of minerals (other than oil and gas or geothermal) on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

### § 211.5 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement or any amendment, supplement or other modification to such agreement.

(b) Any individual Indian mineral owner owning a beneficial or restricted interest in mineral resources may include such resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

### § 211.6 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement,

consideration should be given to the inclusion of the following:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A force majeure provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of the agreement;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted; and

(16) Provisions clearly describing future abandonment, post mining land use, reclamation and restoration activities.

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement and seek advice as to whether the agreement appears to meet the requirements of § 211.7, or whether modifications, additions, or corrections shall be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into an agreement, shall be forwarded to the Secretary for approval.

### § 211.7 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within (1) one hundred and eighty (180) days after submission, or (2) sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other



requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 211.38 and an economic assessment as described in § 211.37, if needed. The Secretary may include in the written findings, recommendations for changes to the agreement needed to qualify it for approval. The 30 day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 211.38) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with: **PRIVILEGED PROPRIETARY INFORMATION OF THE [Name of tribe or Indian]**.

(d) A minerals agreement shall be approved by the Secretary if it is determined in the written findings that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration to the Indian mineral owner;

(2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient

to outweigh its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section shall be determined by the Secretary based on information submitted by the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(g) If any representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, that person shall prepare a written statement of the reasons why the agreement should not be approved and forward this statement—together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents—to the Assistant Secretary—Indian Affairs for decision, with a copy to the affected Indian owner.

(h) The Assistant Secretary Indian Affairs shall review any agreement received containing a recommendation that it be disapproved, and make the final decision for the Department.

#### **Subpart B—Procedures for Competitive Leases**

##### **§ 211.20 Scope.**

The regulations in this Subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into a mining lease under the Act of May 11, 1938 (25 U.S.C. 396a-g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs the leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding

when a tribe is using the 1982 Act as the contracting authority.

##### **§ 211.21 Procedures for awarding leases.**

(a) Competitive mining leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the tribal mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the tribal mineral owner, or the lease may be let through private negotiations in accordance with Subpart A of this part.

(b) Indian mineral owners may request the Secretary to prepare, advertise, negotiate, and/or award mining leases on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a). If requested by a potential operator interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives open to her/him, and that the owner may decline to permit any prospecting, mining, exploration or production.

(c) When the Secretary exercises authority to enter into contracts on behalf of individual Indian mineral owners, or when by the Indian mineral owners under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer leases to the highest responsible qualified bidder subject to the following procedures, unless it is determined, in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The



complete text of the advertisement including a specific description will be mailed to each person listed on the appropriate agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is unsuccessful;

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease to any bidder until the consent of the Indian mineral owner has been obtained.

#### § 211.22 Duration of leases.

(a) No competitive mining lease with an Indian mineral owner shall exceed a primary term of ten (10) years and shall continue as long thereafter as minerals are produced in paying quantities. For the purpose of this provision, the term of a mining lease entered into by means of the exercise of an option shall be measured from the effective date of Secretarial approval of the lease. All provisions in leases governing their duration shall be measured from the date of that approval, unless otherwise provided in the lease.

#### § 211.23 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive mineral leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the lands.

#### Subpart C—General

##### § 211.30 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian minerals entered into pursuant to this part.

##### § 211.31 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations, and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are contained in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration and in the Code of Federal Regulations.

##### § 211.32 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service and in the Code of Federal Regulations.

##### § 211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 7201 *et seq.*). These responsibilities are found in 30 CFR, Chapter VII.

##### § 211.34 Approval of amendments.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part

must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 211.6 or the competitive lease meets the criteria for approval in § 211.21.

(b) An amendment to or modifications of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire contract meets the criteria set forth in § 211.6 or § 211.21 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification and an environmental and cultural assessment pursuant to § 211.38 of this part.

##### § 211.35 Removal of restrictions.

(a) Notwithstanding the provisions of any mining contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the Indian mineral owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such time as the holder of the contract and the unrestricted minerals owner shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue to be subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement which provides that payments to the mineral owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of operations, completion of operations, and production, as if no restrictions had



been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian mineral owner at the time and in the manner specified by the regulations in this part.

**§ 211.36 Geological and geophysical permits.**

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in a contract entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration of the permit, and the consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production or removal of minerals unless specifically so stated in the permit;

(3) The permittee or an authorized representative shall pay for all damages to growing crops, or improvements on the lands, and all other surface damages resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner when so provided for in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed, the Secretary may release the information upon request.

(5) In instances where the Indian mineral owner is also the surface land owner, the Indian mineral owner will obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allottee on her/his land needed for the geological permittee to enter onto the land to conduct exploratory operations. In instances where the Indian mineral owner is not the surface owner, the Indian mineral owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or rights of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit; or

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in a contract entered into pursuant to this part will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of a permit.

**§ 211.37 Economic assessments.**

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the contract that prospecting and mining operations will be conducted with appropriate diligence;

(b) Whether water in the amount needed for purposes of operations under the contract is available;

(c) Whether production royalties or other form of return on the minerals or other valuable resources removed from the leased premises is adequate; and

(d) When a method of contracting other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian mineral owner with a share of the return on the production of her/his mineral equal to what she/he might otherwise obtain through competitive bidding where such a comparison can readily be made.

**§ 211.38 Environmental assessments.**

(a) An environmental assessment shall be prepared by the Secretary in accordance with regulations promulgated by the Council on Environmental Quality, 40 CFR 1508.9, 30 BIAM Supplement 1, and 516 DM 1-7. When it is determined prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of

that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian mineral owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed mineral agreement.

(b) In order to make a determination of the effect of a contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et seq.*, and the American Indian Religious Freedom Act of August 8, 1978 (Pub. L. 95-341), the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property is preserved.

**§ 211.39 Persons signing in a representative capacity.**

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, minerals agreements, leases, or assignments, bonds, or other instruments required by these regulations constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned minerals shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;



(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, minerals agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and her/his trust responsibility to the Indian mineral owner.

#### § 211.40 Bonds.

(a) The Secretary shall require a prospector or operator to furnish a surety bond in such amount as is deemed appropriate.

(b) Before beginning mining operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving officer to assure compliance with the terms of the contract.

(c) Bonding shall be by corporate surety bonds.

(d) The Secretary reserves the discretionary right to require a change in the amount of bonds. The bonds shall be in an amount at least sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an approved partial or supplemental plan.

(e) In lieu of the bonds required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

#### § 211.41 Manner of payments.

Unless otherwise provided for in an approved contract, all payments shall be made to the Secretary or such other party as may be designated and shall be made at such time as provided for in the contract or by regulation.

#### § 211.42 Permission to start operations.

(a) No exploration or mining operations are permitted on any contract premises before the effective date of the contract. The effective date of the contract shall be the date the contract is officially approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises in accordance with applicable rules and regulations. After such permission is secured, operations must be conducted in accordance with all applicable operating regulations promulgated by the Secretary of the Interior. Copies of applicable operating regulations may be secured from either the Authorized Officer or the Superintendent and no operations

should be undertaken without a study of such regulations.

#### § 211.43 Recordkeeping.

(a) The prospector or operator shall maintain records of all prospecting and mining operations conducted pursuant to a contract, including information on the type, grade or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept so that they may be readily inspected.

(b) All maps and records maintained under paragraph (a), all records regarding the financial structure of the prospector or operator, and any other records which are pertinent or related to operations done under a contract shall be available for examination by the Secretary, upon request. Such records shall at all times be available for the purpose of an independent audit upon the request of the Secretary.

(c) All maps and records maintained under paragraphs (a) and (b) will be furnished MMS in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(d) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

#### § 211.44 Mining contracts—individually-owned Indian lands.

(a) The Secretary may execute mining contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, mining contracts involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under provisions of § 211.21 of Subpart B.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a minerals contract where less than 100 percent of the undivided mineral interest is committed to the contract, and the Secretary has determined it to be in the best interest of the Indian mineral owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the mineral interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided mineral interest is committed to the contract;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian mineral owners have been contacted and have refused to consent to the contract; and

(4) The operator is required to submit to, and obtain the approval of the Secretary for a plan describing how the operator will account to the non-consenting mineral interest owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting mineral owners with a certified notice that a contract affecting their undivided interest has been approved without their consent, along with a copy of the operator's plan for accounting for their interests.

#### § 211.45 Assignments; overriding royalties and operating agreements.

(a) *Assignments.* An assignment or sublease of any interest in a contract entered into pursuant to this part shall not be valid without the approval of the Secretary and the Indian mineral owner, if approval by the Indian owner is required in the contract. The assignee must be qualified to hold such contract and shall furnish a satisfactory bond conditioned on the faithful performance of the terms and conditions thereof. Approval shall not relieve the assignor of obligations under the original contract, unless the Secretary, with the consent of the Indian mineral owner when required, releases the assignor of obligations under said contract. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) *Overriding royalties and operating agreements.* Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof is not required. Such agreements shall be construed as not modifying any of the obligations of the operator with



the Indian mineral owner under the contract, the regulations in this part, and Part 216 of this Title, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

**§ 211.46 Termination and cancellation; enforcement of orders.**

(a) If the Secretary determines that a prospector or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, the requirements of an approved exploration or mining plan, Secretarial orders or the orders of the Authorized Officer, and such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the prospector or operator by delivery in person or by certified mail to her/him at her/his last known address. Failure of the prospector or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Secretary's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the prospector or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a prospector or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan,

her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the prospector or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a prospector or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a prospector or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The prospector or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2, *Provided*, appeals of cessation orders under this part shall not relieve the prospector or operator from the obligation to immediately comply therewith.

**§ 211.47 Suspension of operations; remedial operations.**

(a) The Secretary may, under such terms and conditions be prescribed, authorize suspension of operating and producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided*, that such remedial operations are conducted with reasonable diligence during the period of nonproduction

according to the provisions in 43 CFR 3473.4, 3483.3, or 3503.3-2 as applicable. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend operating or producing requirements for economic or marketing reasons on a mining operation capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of operations.

(c) No approval shall be required for a suspension of operations which occurs within the primary term of the contract.

**§ 211.48 Penalties.**

(a) Violations of the terms and conditions of any contract, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 211.46, may subject a prospector or operator to a penalty of not more than \$1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the prospector or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the prospector or operator of her/his right to either request a hearing within 30 days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent whose findings shall be conclusive, unless an appeal is taken pursuant to § 211.49 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the prospector or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the BIA. In the absence of a specific contract provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under § 6621 of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of



payment not received and only for the number of days the payment is late.

(d) Prospectors or operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director, or the MMS official to impose penalties for violations of applicable regulations pursuant to authority granted under 43 CFR Groups 3400 and 3500.

(2) Replacing or superseding any penalty provision in the terms and conditions of a contract approved by the Secretary pursuant to this part.

#### § 211.49 Appeals.

(a) Appeals from decisions of the Departmental officers under this part may be taken pursuant to Part 2 of this Title.

(b) Cessation orders issued pursuant to § 211.46 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian mineral owner, or upon submission of a bond deemed adequate by both the Indian mineral owner and the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

#### § 211.50 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of \$25. All fees collected pursuant to this section shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

#### § 211.51 No mineral agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any mineral agreement, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

#### PART 212—[REMOVED AND RESERVED]

2. Part 212—Leasing of Allotted Lands for Mining is hereby removed and reserved.

3. A new Part 225 is added to read as follows:

#### PART 225—OIL AND GAS AND GEOTHERMAL CONTRACTS

Sec.

- 225.1 Purpose and scope.
- 225.2 Information collection.
- 225.3 Definitions.

##### Subpart A—Fluid Minerals Agreements

- 225.20 Scope.
- 225.21 Authority to contract.
- 225.22 Negotiation procedures.
- 225.23 Approval of agreements.

##### Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

- 225.30 Scope.
- 225.31 Procedures for awarding leases.
- 225.32 Duration of leases.
- 225.33 Rentals; minimum royalty; production royalty on oil and gas leases.
- 225.34 Contracts for subsurface storage of oil and gas.
- 225.35 Surrender of leases.
- 225.36 Forms.

##### Subpart C—General

- 225.40 Scope.
- 225.41 Authority and responsibility of the Bureau of Land Management.
- 225.42 Authority and responsibility of the Minerals Management Service (MMS).
- 225.43 Approval of amendments to contracts.
- 225.44 Geological and geophysical permits.
- 225.45 Removal of restrictions.
- 225.46 Oil and gas and geothermal contracts of undivided inherited lands.
- 225.47 Persons signing in a representative capacity.
- 225.48 Economic assessments.
- 225.49 Environmental assessments.
- 225.50 Bonds.
- 225.51 Manner of payments.
- 225.52 Permission to start operations.
- 225.53 Assignments and overriding royalties and operating agreements.
- 225.54 Suspension of Production; Remedial Workover/Shut-In.
- 225.55 Unitization and communitization agreements and well spacing requirements.
- 225.56 Inspection of premises; books and accounts.
- 225.57 Termination and cancellation; enforcement of orders.
- 225.58 Penalties.
- 225.59 Appeals.
- 225.60 Fees.
- 225.61 No oil and gas or geothermal agreements made with Government employees.
- 225.62 Sales contracts, division orders and other division of interest documents.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a-g), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 102, Act of January 1, 1970 (83 Stat. 42 U.S.C. 4332); Act of December 22, 1982 (96 Stat. 1938, 25 U.S.C. 2101-2108); Act of August 11, 1978 (92 Stat. 469; 42 U.S.C. 1966); Act of January 12, 1953 (96 Stat. 2447, 30 U.S.C. 1701).

#### § 225.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian-owned oil and gas and geothermal resources. Subpart A—Mineral Agreements, establishes the procedures for the approval of oil and gas or geothermal mineral agreements entered into pursuant to the Indian Mineral Development Act of 1982 (Pub. L. 97-382). Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases contains regulations governing the procedures for the issuance of oil and gas and geothermal leases on tribal or allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a-g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to contracts for oil and gas or geothermal agreements. These regulations are intended to ensure that Indian owners desiring to have their oil and gas or geothermal resources developed receive at least fair and reasonable remuneration for the disposition of their resources; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to permit Indian oil and gas or geothermal owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in disposing of their resources.

(b) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract.

(c) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213, 226, and 227.

(d) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501-509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.



**§ 225.2 Information collection.**

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in Section 225 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*).

**§ 225.3 Definitions.**

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Secretary" means the Secretary of the Interior or an authorized representative.

(b) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(c) "Superintendent" means the Bureau Agency Superintendent or an authorized representative having immediate jurisdiction over the oil and gas or geothermal resources covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR Parts 3160 and 3260.

(f) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(g) "Indian owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

(h) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special

tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

(i) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(j) "Geothermal resources" means:

(1) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproduct derived therefrom.

(k) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), contract, or other agreement, or any amendment, supplement or other modification of such agreement, providing for the exploration for, or extraction, processing or other development of oil and gas or geothermal resources, or providing for the sale or disposition of production or products of oil and gas or geothermal resources.

(l) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with an Indian owner with respect to, or has entered into an oil and gas or geothermal contract.

(m) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo community, rancheria, or colony that owns land.

(n) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of oil and gas or geothermal resources on the lands.

**Subpart A—Fluid Minerals Agreements****§ 225.20 Scope.**

The regulations in this subpart govern the procedures for obtaining approval of minerals agreements for the exploration, development and sale of oil and gas reserves or geothermal resources on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

**§ 225.21 Authority to contract.**

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement with respect to oil and gas or geothermal resources in which such Indian tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in oil and gas or geothermal resources, may include such resources in a tribal mineral agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

**§ 225.22 Negotiation procedures.**

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance and information during the negotiation process, and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following provisions:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A *force majeure* provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination or suspension;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted;



(16) Provisions clearly describing to the best of the operator's knowledge, future abandonment, reclamation and restoration activities;

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement, and seek advice as to whether the agreement appears to meet the requirement of § 225.23, or whether modifications, additions or corrections will be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the agreement, shall be forwarded to the Secretary for approval.

#### § 225.23 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within: (1) One hundred and eighty (180) days after submission, or (2) sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made as to whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement, and shall consider, among other things: the potential economic return to the Indian owner; the potential environmental, social, and cultural effects; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C), of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 225.49 and an economic assessment as described in § 225.48, if needed. The Secretary may include in the written findings recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such

findings and all projections, studies, data or other information (other than the environmental assessment required by § 225.49) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with:

PRIVILEGED PROPRIETARY  
INFORMATION OF THE (name of tribe or Indian).

(d) A minerals agreement shall be approved by the Secretary if it is determined that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration, to the Indian mineral owner;

(2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweigh its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(g) If a representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, a written statement of the reasons why the agreement should not be approved shall be prepared and forwarded, together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents, to the Assistant Secretary—Indian Affairs for

decision with a copy to the affected Indian mineral owner.

(h) The Assistant Secretary—Indian Affairs shall review any agreement referred contained a recommendation that it be disapproved, and shall make the final decision for the Department.

### Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

#### § 225.30 Scope.

The regulations in this subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into an oil and gas or geothermal lease through competitive bidding pursuant to the Act of May 11, 1938 (25 U.S.C. 396a-g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

#### § 225.31 Procedures for awarding leases.

(a) Competitive oil and gas and geothermal leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the Indian mineral owner, or the lease may be let through private negotiations.

(b) Indian mineral owners may also request the Secretary to prepare, advertise, negotiate, and/or award an oil and gas or geothermal lease on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. If requested by a potential prospector or operator interested in acquiring lease rights to Indian-owned oil and gas or geothermal resources, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives available, and that the owner may decline to permit leasing, exploration or production.



(c) When the Secretary exercises the authority to enter into leases on behalf of individual Indian mineral owners, or when requested by the Indian mineral owner under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer a lease to the highest responsible qualified bidder subject to the following procedures, unless it is determined in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description of the tracts, will be mailed to each person listed on the agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists, and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful;

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a \$25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to

comply with the foregoing will result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian oil and gas owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease contract to any bidder until the consent of the Indian mineral owner has been obtained.

#### **§ 225.32 Duration of leases.**

(a) No competitive oil and gas or geothermal lease with an Indian mineral owner shall exceed a term of ten (10) years and as long thereafter as oil and gas or geothermal resources are produced in paying quantities.

(b) Where an oil and gas or geothermal lease specifies a term of years and "as long thereafter as oil and gas or geothermal resources are produced in paying quantities" or similar phrase, the term "paying quantities" shall generally mean: Lease production of oil and/or gas or geothermal resources of sufficient value to exceed direct operation costs plus the cost of lease rentals or minimum royalty.

(c) A lease which provides that it shall continue in force and effect beyond the expiration of the primary term if drilling operations have been commenced during the primary term, shall continue in force and effect beyond the expiration date of the primary term if the lessee has commenced actual drilling with a rig designed to reach the total proposed depth by midnight of the last day of the primary term and such drilling is continued with reasonable diligence until the well is completed to production or abandoned.

#### **§ 225.33 Rentals; minimum royalty; production royalty on oil and gas leases.**

(a) An oil and gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of such rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.

(b) If the royalty on oil and gas production paid during any year aggregates less than \$2.50 per acre, the lessee must pay the difference at the end of the lease year. On communitized and unitized leases, the minimum royalty shall be payable only on participating acreage.

(c) Unless otherwise authorized by the Secretary, a royalty of not less than 16%

percent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease shall be calculated in accordance with applicable rules and regulations in 30 CFR.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development, and operation of said premises, gas shall, if requested by the lessor, be furnished by the lessee to the Indian oil and gas owner. Such gas furnished shall be received by the Indian oil and gas owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee, and the Indian mineral owner shall pay a price therefor equal to the current wellhead price, less royalty, or if gas is not being sold, the price to be paid by the Indian oil and gas owner shall equal the highest price that could be obtained from another gas purchaser, less royalty. In addition to the above payments, the Indian oil and gas owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian oil and gas owner. The acquisition and use of any such gas purchased by the Indian oil and gas owner shall be at the Indian oil and gas owner's sole risk at all times. *Provided*, that this requirement shall be subject to the determination by the Superintendent, that gas in sufficient quantities is available above that needed for lease operation, and that waste would not result, and the gas is not subject to any pre-existing sales contracts, or disposition of such gas is not otherwise provided for in the lease. Where an arrangement is made to furnish gas to the Indian oil and gas owner pursuant to this section, it may be terminated only with the approval of the Secretary.

#### **§ 225.34 Contracts for subsurface storage of oil and gas.**

(a) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The



storage contract or modification, amendment, or extension, shall provide for the payment of such fee or rental, or in lieu thereof, for a royalty or percentage payment. All such fees, rentals, royalty or percentage payments shall be in addition to any royalties or rentals required by any lease committed to such a storage agreement.

(b) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, a provision in an oil and gas contract under which storage of oil or gas is authorized for continuance of the contract at least for the period of such storage use and so long thereafter as oil or gas not previously produced, is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the Secretary and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project.

#### § 225.35 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(a) The lessee shall request the Secretary to terminate the lease and pay a \$25 filing fee.

(b) All royalties and rentals due on the date the request for termination is made must be paid.

(c) The Superintendent, after consultation with the Authorized Officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all wells drilled on the portion of the lease surrendered have been properly abandoned or conditioned, whichever is required.

(d) If a lease has been recorded, the lessee must submit a recorded release of the acreage covered by the request.

(e) If a lessee requests termination of an entire lease or an entire undivided portion of a lease, she/he must surrender the lease; provided that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must surrender only her/his copy of the assignment.

(f) If the lease, or a portion thereof, being terminated is owned in undivided interests by more than one party, all parties owning undivided interests in the lease must join in the request for termination.

(g) No part of any advance rental shall be refunded to the lessee, nor shall the lessee be relieved of the obligation to pay advance rental when it becomes

due, by reason of any other subsequent surrender or termination of a lease or a portion thereof.

(h) If oil and gas is being drained from the leased premises by a well or wells located on lands not included in an Indian oil and gas lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions on the termination of the lease to protect the interests of the Indian oil and gas owners of the lands surrendered, such as payment of compensatory royalty for any drainage.

#### § 225.36 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive oil and gas or geothermal leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the land.

### Subpart C—General

#### § 225.40 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian oil and gas or geothermal resources entered into pursuant to this part.

#### § 225.41 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are provided for in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration.

#### § 225.42 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service.

#### § 225.43 Approval of amendments to contracts.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part, must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 225.23, or if the competitive lease meets the criteria for approval in § 225.31.

(b) An amendment to or modification of a contract for the exploration, development and production of Indian-owned oil and gas or geothermal resources, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 225.23 or § 225.31 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 225.48 of this part, and an environmental and cultural assessment pursuant to § 225.49 of this part.

#### § 225.44 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in an oil and gas or geothermal contract entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of or removal of oil and gas or geothermal unless specifically so stated in the permit;

(3) The permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian owner, when so provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in



the permit, the Secretary may release such information upon request.

(5) In instances where the Indian owner is also the surface land owner, the Indian owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee; or allottee on her/his land needed for the geological permittee to enter onto the land to conduct exploratory operations. In instances where the Indian owner is not the surface owner, the Indian owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or rights of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit;

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in an oil and gas or geothermal contract entered into pursuant to this part, will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of the permit.

#### § 225.45 Removal of restrictions.

(a) Notwithstanding the provisions of any oil and gas or geothermal contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the oil and gas or geothermal owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall

continue to be subject to the supervision of the Secretary until such times as the holder of the contract and the unrestricted Indian owner, shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the oil and gas or geothermal resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement, which provides that payments to the oil and gas or geothermal owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of drilling operations, completion of wells, and production, the same as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian owner at the time and in the manner specified by the regulations in this part.

#### § 225.46 Oil and gas and geothermal contracts of undivided inherited lands.

(a) The Secretary may execute oil and gas or geothermal contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, contracts for the development of such interests may be executed by the Secretary, provided that such interests have been offered for sale under provision of § 225.31.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a contract where less than 100 percent of the undivided mineral interest is

committed to the contract and the Secretary has determined it to be in the best interest of the Indian owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the oil and gas or geothermal interests of the consenting Indian owners;

(2) Sixty-six and two thirds percent or more of the undivided oil and gas or geothermal interest is committed to the lease;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian owners have been contacted and have refused to consent to the lease; and

(4) The operator is required to submit, and obtain the approval of the Secretary to, a plan describing how the operator will account to the non-consenting Indian owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting Indian owners with a certified written notice that a contract has been approved without their consent, that affects their undivided interest along with a copy of the operator's plan for accounting for their interests.

#### § 225.47 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, oil and gas or geothermal agreements or assignments, bonds, or other instruments required by these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned oil and gas or geothermal resources, shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, contract, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and the trust responsibility to the Indian owner.



**§ 225.48 Economic assessments.**

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the oil and gas or geothermal contract that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on oil and gas or geothermal resources is adequate; and

(c) When a method of contracting for development of oil and gas other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian oil and gas owner with a share of the return on the production of her/his oil and gas equal to what the owner might otherwise obtain through competitive bidding, when such a comparison can readily be made.

**§ 225.49 Environmental assessments.**

(a) An environmental assessment shall be prepared or caused to be prepared by the Secretary in accordance with regulations promulgated by the Council for Environmental Quality, 40 CFR 1508.9, and 30 BIAM Supplement 1 and 516 DM 1-7. When it is determined prior to the preparation of the assessment that an environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(b) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et seq.*, the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and production activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing

in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the oil and gas or geothermal development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property preserved.

**§ 225.50 Bonds.**

(a) The Secretary may require a geological or geophysical permittee or operator to furnish surety bonds in such amount deemed appropriate.

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving official, but in no event less than \$10,000.

(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file one bond of \$50,000 for all oil and gas or geothermal contracts in any one state, or such lesser jurisdiction as determined by the Secretary, including contracts on that part of an Indian reservation extending into states contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this section, an operator or permittee may file with the Secretary a bond in the sum of \$150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.

(e) Bonding shall be by corporate surety bonds.

(f) In lieu of a bond required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

(g) The right is specifically reserved to the Secretary to increase or decrease the amount of bonds or letters of credit at her/his discretion.

**§ 225.51 Manner of payments.**

Unless otherwise provided in an approved contract, all payments shall be paid to the Secretary or such other party as she/he may designate, and shall be made at such time as provided in the advertisement, permit, or mineral agreement.

**§ 225.52 Permission to start operations.**

(a) No exploration or drilling operations are permitted on any contract area before the effective date of the oil and gas or geothermal contract. The effective date of the contract shall be the date the contract is officially

approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises, in accordance with applicable rules and regulations in Title 43 CFR, Parts 3160 and 3260, and Orders or Notice to Lessees (NTL) issued thereunder. After such permission is secured, operations must be in accordance with all applicable operating rules and regulations promulgated by the Secretary of the Interior. Copies of applicable regulations may be secured from either the Authorized Officer or the Superintendent and no operations should be undertaken without a study of such regulations.

**§ 225.53 Assignments and overriding royalties and operating agreements.**

(a) *Assignments.* An assignment of oil and gas or geothermal contracts or any interest therein, shall not be valid without the approval of the Secretary and the Indian owner, if approval of the Indian owner is required in the contract. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof. An operator must assign either her/his entire interest in a contracted area or a legal subdivision (which may be a separate horizon) thereof, or an undivided interest in the whole lease or contracted area: *Provided*, that when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons, such assignment shall be subject to both the consent of the Secretary and the Indian owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Secretary within 30 days after the date of the execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) *Overriding royalties and operating agreements.* Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto. Such agreements shall be construed as not modifying any of the



obligations of the operator with the Indian owner under her/his contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

**§ 225.54 Suspension of production; remedial workover/shut-in.**

(a) The Secretary may under such terms and conditions as she/he may prescribe, authorize suspension of producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided*, that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3162.3-2. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend producing requirements for economic or marketing reasons on an oil and/or gas or geothermal well capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of production.

(c) No approval shall be required for a suspension of production which occurs within the primary term of the contract.

**§ 225.55 Unitization and communitization agreements; and well spacing requirements.**

(a) *Unitization and communitization agreements.* (1) For the purpose of promoting conservation and efficient utilization of natural resources, the Secretary, with the consent of the Indian mineral owner, may approve a cooperative unit, drilling or other development plan on any contracted area upon a determination that approval is advisable and in the best interest of the Indian owner. For the purposes of this section, a cooperative or other plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the

agreement. Such agreements include unit agreements and other types of agreements which allocate costs and benefits.

(2) Where individual or tribal Indian owners have consented in an oil and gas or geothermal contract to include their lands in a cooperative or other development plan, further consent of such owners shall not be required to obtain the approval of a proposed agreement by the Secretary.

(3) A request for approval of a cooperative plan shall be filed with the Superintendent which must comply with the requirements of all applicable rules and regulations.

(4) All Indian owners of any right, title or interest in the oil and gas or geothermal resources to be unitized are proper parties to the proposed agreement, and must be invited to join the agreement unless prior consent to unitization has been given. If any Indian oil and gas or geothermal owner refuses to join in an agreement, the request for approval shall include: An affidavit certifying that reasonable efforts were made to obtain her/his consent, and a copy of a return receipt showing that an invitation to join the unit was mailed to the Indian owner by certified mail at her/his last known mailing address.

(5) A request for approval of a proposed agreement, and documents incident to such agreements, should be filed with the Superintendent ninety (90) days prior to the expiration date of the first Indian oil and gas or geothermal contract to expire in the unit.

(6) Prior to approving or disapproving a proposed agreement, the Superintendent shall obtain the recommendation of the Authorized Officer for approval or disapproval, based upon the engineering and technical aspects of the agreement.

(7) Approval shall be retroactive to the date the proposed agreement was submitted to the Department or the date that first production occurred within the unit, whichever is earlier. Review of the agreement shall be primarily concerned with engineering and technical aspects of the agreement and shall generally not consider the other terms and conditions of affected leases (e.g., royalty rate and bonuses).

(8) Any oil and gas or geothermal contract committed in part to any such agreement shall be segregated into separate minerals contracts or leases as to the lands committed and lands not committed to the agreement. Such segregation shall be effective the date the agreement is approved by the Secretary.

(b) *Well spacing requirements.* Each well within a cooperative unit shall be

drilled in conformity with an acceptable well spacing program at a surveyed well location approved or prescribed by the Authorized Officer after appropriate environmental and technical reviews. An acceptable well spacing program may be (1) a program which conforms to a spacing order or field rule which is acceptable to the Authorized Officer; (2) a program which proposes drilling a well on lands committed to an agreement at a location approved by the Authorized Officer, or (3) any other well spacing approved by the Authorized Officer.

**§ 225.56 Inspection of premises; books and accounts.**

(a) Operators shall allow Indian owners, their representatives or any authorized representative of the Secretary to enter all parts of the contracted premises for the purpose of inspection only at their own risk. Books and records shall be available only during business hours. Operators shall keep a full and correct account of all operations and make reports thereof, as required by the contract and applicable regulations.

(b) Records will be provided to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(c) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

**§ 225.57 Termination and cancellation; enforcement of orders.**

(a) If the Secretary determines that a permittee or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, her/his orders, or the orders of the Authorized Officer and such noncompliance does not threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the permittee or operator by delivery in person or by certified mail to the permittee or operator at her or his last known address. Failure of the permittee or operator to take action in accordance with the notice of noncompliance, within the time limits specified by the Secretary, shall be grounds for



suspension of operations subject to such notice by the Superintendent, or grounds for the Superintendent's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the permittee or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the permittee or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a permittee or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the permittee or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a permittee or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The permittee or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the

Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2. *Provided*, appeals of cessation orders under this part shall not relieve the permittee or operator from the obligation to immediately comply therewith.

#### § 225.58 Penalties.

(a) Violations of the terms and conditions of any permit, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 225.57, may subject a permittee to a penalty of not more than \$1,000 per violation per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action. Similarly, violations of the terms and conditions of any contract, other than those relating to operational or royalty management matters, the regulations in this part, or failure to comply with a notice of noncompliance or cessation order issued in that regard pursuant to § 225.57, may subject the operator to a penalty of not more than \$1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of proposed penalty shall be served on the permittee or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the permittee or operator of the right to either request a hearing within 30 days from receipt of the notice, or pay the proposed penalty. Hearings shall be held before the Superintendent, whose findings shall be conclusive, unless an appeal is taken pursuant to § 225.59 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the permittee or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment

is received by the Secretary. In the absence of a specific permit or contract provision prescribing a different rate, the interest rate on late payments and under payments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest will be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Permittees and operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer and/or the MMS Official to issue notices of violations or to impose assessments and/or penalties for violations of applicable regulations pursuant to the authority granted under 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II; or

(2) Replacing or superseding any penalty provision in the terms and conditions of a permit or contract approved by the Secretary pursuant to this part.

#### § 225.59 Appeals.

(a) Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to Part 2 of this Title.

(b) Notices of violations, cessation orders, assessments, or proposed penalties issued pursuant to this part, 43 CFR Part 3160 and 3260 or 30 CFR Chapter II shall not be suspended as a result of an administrative review, hearing on the record, or the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an administrative review, hearing on the record, or appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian owner, or upon submission of a bond deemed adequate by both the Indian owner and the Secretary to indemnify the Indian owner from any resulting loss or damage.

#### § 225.60 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of not less than \$25. All fees collected pursuant to this section, shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.



**§ 225.61 No oil and gas or geothermal agreements made with Government employees.**

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any oil and gas or geothermal contract, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

**§ 225.62 Sales contracts, division orders and other division of interest documents.**

Sales contracts, division orders and other division of interest documents necessary under this part shall be regulated by 30 CFR Parts 207 and 210.

W.P. Ragsdale,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 87-24075 Filed 10-20-87; 8:45 am]

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# 30 CFR Part 780 Federal Register

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Wednesday  
October 21, 1987

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## Part III

### Department of the Interior

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Office of Surface Mining and Reclamation  
Enforcement

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30 CFR Parts 780, 784, 816, and 817  
Surface Coal Mining and Reclamation  
Operations; Permanent Regulatory  
Program; Performance Standards;  
Permanent and Temporary  
Impoundments; Proposed Rule



## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining and Reclamation Enforcement

## 30 CFR Parts 780, 784, 816 and 817

## Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Permanent and Temporary Impoundments

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) proposes to amend portions of its permanent program regulations governing permanent and temporary impoundments at surface and underground mining operations. Most of the proposed revisions are in response to a court decision; revisions are also being proposed in response to a 1986 amendment to the Surface Mining Control and Reclamation Act of 1977.

The proposed rule, which concerns the design, construction and inspection requirements that apply to impoundments, would: (1) Establish a size criteria for the distinction between large and small impoundments; (2) require a minimum static safety factor for small impoundments; (3) provide for stable foundations and abutments during all phases of construction for small impoundments; (4) establish new spillway requirements for impoundments; and (5) authorize qualified registered professional land surveyors to inspect small impoundments and to certify the construction of siltation structures.

**DATES:** *Written comments:* OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern time on December 30, 1987.

*Public hearings:* Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC, on December 23, 1987; in Denver, Colorado on December 23, 1987; and in Knoxville, Tennessee on December 23, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on December 7, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR

## FURTHER INFORMATION CONTACT"

beforehand to verify that the hearing will be held.

**ADDRESSES:** *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240.

*Public hearings:* Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

*Request for public hearings:* Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

**FOR FURTHER INFORMATION CONTACT:** Robert A. Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-1502 (Commercial or FTS).

## SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

## I. Public Comment Procedures

## Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to an address other than those listed above (see "ADDRESSES") may not necessarily be considered or included in the Administrative Record for the final rule.

## Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "DATES" and "ADDRESSES"). The dates and addresses for the hearings at the remaining locations have not yet been

scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Wiles (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time December 7, 1987. If no one has contacted Mr. Wiles to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

## II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act, or SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements governing surface coal mining and the surface impacts of underground coal mining. Environmental protection performance standards for permanent water impoundments constructed during surface mining activities appear in section 515(b)(8) of the Act, 30 U.S.C. (1265(b)(8)); provisions governing the construction of siltation structures appear in section 515(b)(10)(B), 30 U.S.C. 1265(b)(10)(B). Sections 516(b)(9) and (10) of the Act, 30 U.S.C. 1266(b)(9) and (10), impose similar requirements for water impoundments and siltation structures that are used for underground mining activities, but provide that the Secretary shall make such modifications in the requirements as are necessary to accommodate the distinct differences between surface and underground mining.

The permanent regulatory program for surface coal mining and reclamation operations was promulgated on March 13, 1979 (44 FR 15312). Requirements for sedimentation ponds at surface mining activities were established at 30 CFR 816.46 (44 FR 15400), while those for underground mining activities were established at 30 CFR 817.46 (44 FR



15426). OSMRE implemented the provisions of section 515(b)(10)(B) of the Act on siltation structures by establishing requirements for sedimentation ponds. At that time, OSMRE considered such ponds to be the "best technology currently available" for controlling sediment movement from surface coal mining operations.

Requirements for permanent and temporary impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 816.49 (44 FR 15401) and 30 CFR 817.49 (44 FR 15428), respectively.

Permitting requirements for reclamation and operation plans for impoundments at surface mining activities and underground mining activities were established in the 1979 rules at 30 CFR 780.25 (44 FR 15360) and 30 CFR 784.25 (44 FR 15368), respectively.

During revisions to the permanent regulatory program in 1983, OSMRE replaced most of the specific design criteria in § 816.46 (48 FR 44051) and § 816.49 (48 FR 44004) with performance standards, thereby providing regulatory authorities greater flexibility in the details of impoundment design. Section 816.46 was renamed "Hydrologic balance: Siltation Structures," to be consistent with the wording of section 515(b)(10)(B)(ii) of the Act and to reflect rule changes which provided for the use of certain siltation structures other than sedimentation ponds, such as chemical treatment facilities or mechanical structures that have a point-source discharge.

In promulgating the 1979 rules, and again in the 1983 rules, OSMRE did not identify any differences between impoundments for surface and underground mines that necessitated different regulatory provisions. The permitting rules applicable to impoundments for surface mining activities at 30 CFR 780.25 and those for underground mining activities at 30 CFR 784.16 are identical. Similarly, the rules for surface mining activities at 30 CFR 816.46, 816.49, and 816.84 are identical to the rules for underground mining activities at 30 CFR 817.46, 817.49, and 817.84, respectively. To simplify the preamble to this proposed rule, it discusses existing and proposed 30 CFR 780.25, 816.46, 816.49, and 816.84 with the understanding that the discussion also applies to 30 CFR 784.16, 817.46, 817.49, and 817.84, respectively.

Upon issuance, the 1983 rulemaking for §§ 816.46 and 816.49 and related coal mine waste impounding structure provisions in § 816.84(b) was challenged in the U.S. District Court for the District

of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C. July 15, 1985) (*In Re: Permanent (II)*). The court remanded: (1) Sections 816.49 (a)(3) and (a)(5)(i) on the basis that they included requirements for a static safety factor and for foundation investigation and laboratory testing of small sedimentation ponds without having included such requirements when the rule was proposed on June 21, 1982, as required by the Administrative Procedure Act; and (2) §§ 816.49 and 816.84(b) to the extent that they relied on Mine Safety and Health Administration (MSHA) impoundment size classification standards when OSMRE had not justified reliance on such standards. Slip op. at 30-32 and 102-117. In addition, in response to plaintiff's challenge of the combination spillway requirement of §§ 816.49(a)(8) and 816.84(b)(1), the Secretary of the Interior agreed to propose a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. Slip op. at 34 and 117.

The remainder of this "Background" section of the preamble is organized by issues as follows: (1) Impoundment size distinction; (2) spillways; (3) stability; (4) foundations; (5) certifications of siltation structures; and (6) inspections of impoundments. Proposed changes to the rule are discussed, section-by-section, in the "Discussion of Proposed Rule."

### 1. Impoundment Size Distinction

In both the 1979 and 1983 regulations at 30 CFR 816.49, OSMRE classified impoundments based on a size distinction and stipulated that larger, potentially more hazardous, impoundments, be subject to more stringent requirements than smaller, potentially less hazardous, impoundments. This classification also applied in the 1983 rules to sedimentation ponds at 30 CFR 816.46(c)(2) and coal mine waste impounding structures at 30 CFR 816.84(b).

OSMRE adopted the MSHA criteria for impoundment structures in the 1979 rule (44 FR 15401) and continued to apply them in the 1983 rules. MSHA criteria in 30 CFR 77.216 stipulate design, construction and maintenance requirements for structures and takes into account size and potential hazard (see "Discussion of Proposed Rule" for specific MSHA criteria). Under §§ 816.46(c)(2) and 816.49 of the 1983 rules, structures meeting these criteria were required to meet MSHA requirements. Similarly, the

requirements for coal mine waste impounding structures in § 816.84(b) of the 1983 rules are based on the same criteria.

In *In Re: Permanent (II)*, plaintiffs objected to OSMRE using this distinction between sizes of coal mine waste impounding structures in § 816.84(b) (48 FR 44029), contending that the distinction had the effect of resulting in less scrutiny for smaller impoundments. Plaintiffs contended that OSMRE's adoption of the size distinctions used by MSHA was improper, and that OSMRE should independently classify impoundment size. Plaintiffs maintained that the Secretary had not justified the distinction in terms of the Act.

The court remanded § 816.84(b), insofar as it depended on the MSHA criteria, finding that the Secretary must independently consider and justify the adoption of a distinction based on impoundment size, and that he had not properly justified the rule using the MSHA criteria. *In Re: Permanent (II)*, Slip op. at 30-32. The court also remanded § 816.49 for the same reasons.

On November 20, 1986, OSMRE announced its intention to propose a new rule to comply with the court order (51 FR 41958). After reconsidering the administrative record of the previous rules, as well as the legislative history of the Act and the opinion of the court, OSMRE has decided to repropose §§ 816.49(a), 816.46(c)(2) and 816.84(b) using MSHA size distinctions. However, when applying the size criteria to determine which impoundments must meet the more stringent stability requirements in § 816.49(a)(3), OSMRE proposes to incorporate a provision whereby a small impoundment would be subject to the more stringent requirements for large impoundments if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage. The justification for using these criteria is included in the subsequent section of this preamble entitled "Discussion of Proposed Rule."

### 2. Spillways

The 1983 rules in 30 CFR 816.49(a)(8) and 816.84(b)(2) required that all impoundments, including coal mine waste impounding structures, include a combination of principal and emergency spillways designed and constructed to safely pass the design precipitation event. This requirement for a combination of principal and emergency spillways was challenged in *In Re: Permanent (II)*. The Secretary determined that the challenge had merit



and stated his intention to propose a rule specifying that one spillway that can safely pass the design precipitation event may serve as a combination principal and emergency spillway. *In Re: Permanent (II)*, Slip op. at 34 and 117. On November 20, 1986 (51 FR 41952), OSMRE announced the suspension of §§ 816.49(a)(8) and 816.84(b)(2) to the extent that they required separate principal and emergency spillways where one spillway may safely pass the design precipitation event.

### 3. Stability

In 1982, OSMRE proposed (47 FR 26760) that static safety factors for impoundments be determined "by prudent engineering design." In response to comments on the 1982 proposal and in order to simplify the requirement, OSMRE adopted in the 1983 rulemaking at § 816.49(a)(3) (48 FR 44004) a single static safety factor of 1.5 and a seismic safety factor of at least 1.2 for all impoundments.

Challengers to the 1983 rule in *In Re: Permanent (II)* contended that OSMRE's 1982 proposed rule had not included a static safety factor of 1.5 for small impoundments, and therefore the public was not given adequate notice under the Administrative Procedure Act that this requirement would apply to small sedimentation ponds. The court remanded OSMRE's 1983 rule for additional rulemaking to the extent that it applied to small sedimentation ponds not previously required to meet the 1.5 static safety factor. *In Re: Permanent (II)*, Slip op. at 108-113. Accordingly, on November 20, 1986, OSMRE suspended § 816.49(a)(3) insofar as it applied to small sedimentation ponds (51 FR 41958).

### 4. Foundations

In the 1983 rule (48 FR 44004), OSMRE prescribed in § 816.49(a)(5)(i) that the foundations and abutments for impounding structures be designed to be stable under all conditions of construction and operation. Section 816.49(a)(5)(i) also required sufficient foundation investigation and laboratory testing to determine design requirements for foundation stability for all impoundments, regardless of size. That provision was challenged in *In Re: Permanent (II)* on the basis that the rule violated the Administrative Procedure Act because the requirements for foundation investigation and laboratory testing were not included for small sedimentation ponds when OSMRE proposed the rule in 1982 (47 FR 26759).

The court remanded § 816.49(a)(5)(i) rejecting the application of foundation investigation and laboratory testing to

small ponds because there was not sufficient notice in the proposed rule that these requirements were being applied to small ponds. *In Re: Permanent (II)*, Slip op. at 108-113. On November 20, 1986 (51 FR 41958), in response to the court action, OSMRE announced suspension of § 816.49(a)(5)(i) insofar as it applied to small sedimentation ponds.

### 5. Certifications of Siltation Structures

An October 30, 1986, amendment to the Act authorized land surveyors to certify the construction of siltation structures (Sec. 123, Pub. L. 99-591, 100 Stat. 3341-267). The certification requirement of section 515(b)(10)(B)(ii) of the Act was amended by inserting after "qualified registered engineer" the phrase: "or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." Prior to this amendment, section 515(b)(10)(B)(ii) required that siltation structures be certified only by a qualified registered engineer.

### 6. Inspections of Impoundments

The 1979 impoundment regulations at § 816.49(h) (44 FR 15402) authorized land surveyors to perform and certify the annual inspection of small impoundments except for coal processing waste dams and embankments. During the preparation of the 1983 rule (48 FR 44004) OSMRE inadvertently omitted this provision from § 816.49. In 1985, to implement a November 4, 1983, amendment to the Act, OSMRE promulgated a final rule (50 FR 16194) that allowed qualified land surveyors in certain states to certify the design of small impoundments under § 780.25(a)(3)(i) and 816.49(a)(2).

Although neither the 1979 nor the 1983 rule included any comments on the merits of land surveyors doing the annual inspection of small impoundments, comments received during the preparation of the 1985 final rule suggested that land surveyors were fully capable of performing such inspections (50 FR 16197). OSMRE found the comments on this point to have merit and stated in the preamble to the 1985 rule that it would consider proposing a revision to § 816.49(a)(10) to allow post-construction inspections of small impoundments by qualified land surveyors. However, OSMRE believed that it was inappropriate to include such a provision in the final 1985 rule because it had not been included in the proposed rule (49 FR 38959). OSMRE's proposal implementing this provision is included in the subsequent section of this

preamble entitled "Discussion of Proposed Rule."

### III. Discussion of Proposed Rule

After consideration of the administrative record of these regulations, as well as the legislative history of the Act and the opinions of the court, and in light of current technical information on impoundment design, construction and inspection, OSMRE is proposing the following revisions to its permanent regulatory program. Consistent with its findings when promulgating the 1979 and 1983 rules, OSMRE has not identified any differences between impoundments for surface and underground mines that would appear to necessitate different regulatory provisions under this proposed rulemaking. Therefore, the proposed permitting rule applicable to impoundments for surface mining activities at 30 CFR 780.25 and the proposed rule for underground mining activities at 30 CFR 784.16 are identical. Similarly, the proposed rules for surface mining activities at 30 CFR 816.46, 816.49, and 816.84 are identical to the proposed rules for underground mining activities at 30 CFR 817.46, 817.49, and 817.84, respectively. The discussion of the proposed changes to 30 CFR 780.25, 816.46, 816.49, and 816.84 also applies to the proposed changes in 30 CFR 784.16, 817.46, 817.49, and 817.84, respectively.

#### *Sections 780.25(c)/784.16(c) Permitting requirements for permanent and temporary impoundments*

Section 780.25(c) of OSMRE's permanent program regulations establishes permitting requirements applicable to the design of permanent and temporary impoundments. The proposed revisions to § 780.25(c) primarily are organizational changes. Proposed § 780.25(c)(1) is retained from § 780.25(c) of the 1983 rule. The proposed requirement in § 780.25(c)(2) that a copy of the plan submitted to the District Manager of MSHA under 30 CFR 77.216(a) also be submitted to the SMCRA regulatory authority as part of the permit application is taken from § 816.49(a)(1) of the 1983 rule. This sentence is moved from § 816.49(a)(1) § 780.25(c)(2) because it is more relevant to the permitting provisions than to the performance standards (see subsequent discussion of proposed §§ 816.49(a)(1)/817.49(a)(1)).

In § 780.25(c)(3), OSMRE proposes to add a new provision that allows the regulatory authority to establish engineering design standards, in lieu of engineering tests, for small impoundments located where



impoundment failure would not be expected to cause a loss of life or serious property damage. The design standards would be implemented through the State program approval process which would ensure compliance with the minimum static safety factor of 1.3 for small impoundments proposed in § 816.49(a)(3)(ii). OSMRE's approval of any design standards issued by the regulatory authority would be based on the ability of those standards to ensure achievement of that minimum static safety factor.

This approach provides for the promulgation of a national standard based on a 1.3 safety factor, but still allows the regulatory authority to establish state and local design standards to accommodate local conditions. Under this provision, a regulatory authority could establish specific embankment slopes, minimum freeboard requirements, etc., which would provide the required safety factor within the range of conditions for which they are authorized. Allowing small impoundments to be designed and constructed using design standards follows the intent of the 1979 rules.

*Sections 816.46(b)(3)/817.46(b)(3)  
Certifications of siltation structures.*

In response to an October 30, 1986, amendment to the Act (see 5. *Certifications of siltation structures* in "Background"), OSMRE proposes to amend § 816.46(b)(3) to authorize land surveyors to certify the construction of siltation structures before they are placed in operation. Prior to the amendment, this section of the Act required that qualified registered engineers certify siltation structures. The proposed rule would authorize the certification of siltation structures by a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify cross sections, maps, and plans in accordance with § 780.25.

*Sections 816.46(c)(2)/817.46(c)  
Sedimentation pond spillways.*

Because the spillway requirements for sedimentation ponds are based on the spillway design requirements for permanent and temporary impoundments in § 816.49(a)(8), the proposed changes in § 816.49(a)(8) necessitate proposed changes to § 816.46(c)(2). The proposed rule would require that sedimentation pond spillways have sufficient capacity to safely pass the specified precipitation event. Under proposed § 816.46(c)(2), a single spillway is sufficient for a large or small sedimentation pond so long as it passes the specified precipitation event.

Section 816.45(c)(2) would authorize the regulatory authority to approve the design of a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the sedimentation pond will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the sedimentation pond is located where failure would not be expected to cause loss of life or serious property damage. OSMRE believes that this new provision would be useful for those sedimentation ponds where the runoff area is small, or where pumps or a decant structure would be used to control the water level in the facility. OSMRE believes that current, prudent, engineering practice requires that at least 90 percent of the water stored during the design precipitation event be removed within the 10-day period following the design precipitation event. OSMRE welcomes comments on the suitability of this provision.

Section 816.46(c)(2) would also change the provision in § 816.46(c)(2)(ii) of the 1983 rule which specifies that such ponds "may use a single spillway if the spillway (A) is an open channel of nonerodable construction and capable of maintaining sustained flows; and (B) is not earth- or grass-lined." OSMRE is proposing to allow a single spillway as long as the specified design precipitation event can be accommodated, regardless of whether an open channel design is employed. Section 816.46(c)(2) would require that "if an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined."

Proposed § 816.46(c)(2)(i) would require that large sedimentation ponds, those meeting the size or other qualifying criteria of § 77.216(a) of this title, shall comply with all the requirements of that section, and shall have sufficient spillway capacity to safely pass a 100-year, 6-hour precipitation event, or greater even as specified by the regulatory authority. The language implying that more than one spillway was required would be removed.

Proposed § 816.45(c)(2)(ii) would require that small sedimentation ponds, those not meeting the size or other qualifying criteria of 30 CFR 77.216(a), shall have sufficient spillway capacity

to safely pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority. The 6-hour precipitation event is the same as in the 1983 rule.

*Sections 816.49(a)(1)/817.49(a)(1)  
Impoundment size distinction.*

Proposed § 816.49(a)(1) would continue to apply the MSHA criteria, including a size distinction, in differentiating between impoundments, but would incorporate a provision whereby a small impoundment would be subject to the more stringent requirements for large impoundments in OSMRE regulations if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage.

Under MSHA rules, impoundments are subject to the requirements of 30 CFR 77.216 if they can: (1) Impound water, sediment or slurry to an elevation of 5 feet or more above the upstream toe of the structure and can have a storage volume of 20 acre-feet or more; or (2) impound water, sediment or slurry to an elevation of 20 feet or more above the upstream toe of the structure; or (3) as determined by the MSHA District Manager, present a hazard to coal miners. Impoundments meeting these criteria would be subject to MSHA requirements, as well as OSMRE requirements for large impoundments. Those not meeting the criteria would not be subject to MSHA requirements. However, under a new provision being proposed in § 816.49(a)(3), a small impoundment would be subject to the more stringent stability requirements for large impoundments specified in § 816.49(a)(3) if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage (see discussion of proposed changes in § 816.49(a)(3), *Stability*).

OSMRE is interested in receiving comments on the suitability of adopting the criteria proposed in § 816.49. Comments should specifically address whether there would be a problem with small impoundments that meet the stability standards of the Act receiving less scrutiny during construction and inspection.

OSMRE is proposing to reorganize both § 780.25(c) and § 816.49(a)(1) to clarify impoundment size distinctions relative to permitting and to performance standards, respectively. The proposed first sentence in § 816.49(a)(1) is the same as in the 1983 rule except that "size or other" is inserted before "criteria" to be



consistent with other references in the proposed rule.

OSMRE is proposing to move from § 816.49(a)(1) of the 1983 rule to § 780.25(c)(2) the sentence requiring that a copy of the plan submitted to the District Manager of MSHA under 30 CFR 77.216(a) also be submitted to the SMCRA regulatory authority as part of the permit application. This sentence is moved to § 780.25(c)(2) because it is more relevant to the permitting provisions than to the performance standards.

After re-evaluating the administrative record for this rule, the legislative history of the Act, the opinions of the court, and current technical information concerning impoundment design, construction and inspection, OSMRE believes that the record clearly supports the adoption of a distinction based on size and, specifically, the adoption of the MSHA criteria. In justifying the size distinction proposed in this rule, OSMRE relies on its determination of the major safety and environmental concerns in impoundment design and construction and looks to the Act and to the example of other Federal agencies experienced in the design, construction and inspection of impoundments.

The major safety and environmental concerns in regulating impoundments are the volume of water discharged in case of rupture; the pressure against the retaining embankment; and the downstream risks to people and property. OSMRE has concluded that, although size is not the only hazard consideration in regulating impoundments, the magnitude of risk clearly increases with the size of the impoundment. Based on this conclusion, it is reasonable to distinguish between different sized impoundments in establishing performance standards under SMCRA.

The Act neither requires nor precludes the adoption of a size distinction. Section 515(b)(8)(B) of the Act, which addresses the stability and margin of safety necessary in constructing permanent water impoundments requires compatibility with structures constructed under Public Law 83-566, "The Watershed Protection and Flood Prevention Act of 1954." In implementing Pub. L. 83-566 by assisting in the construction of more than 8000 impoundments, the U.S. Department of Agriculture's Soil Conservation Service (SCS) has established a size distinction as part of its criteria for design and construction. According to the SCS criteria, smaller, potentially less hazardous, impoundments are designed and constructed to less stringent standards (see SCS Design Guide 378,

updated in 1985) than larger impoundments (see SCS Technical Release Number 60, updated in 1985).

In determining the potential hazard of an impoundment, SCS takes into account the potential loss of life; damage to homes, commercial or industrial buildings, main highways, or railroads; and interruption of the use of service of public utilities. OSMRE believes that impoundments designed and constructed in a manner that adequately considers these factors would be adequate under SMCRA.

Similarly, when MSHA established its criteria in 30 CFR 77.216 for determining which impoundments should be subject to design, construction and inspection requirements for purposes of protecting miners, the agency adopted a size distinction. Smaller impoundments that have not otherwise been determined to be hazardous are not even subject to MSHA regulations.

In addition to the specific SCS and MSHA examples, there is broad recognition among Federal agencies of the validity of making a size distinction for impoundments. In 1979, the Federal Coordinating Council for Science, Engineering and Technology, a body representing eight Federal agencies concerned with dam safety, issued the Federal Guidelines for Dam Safety. The guidelines, for use by those Federal agencies responsible for the planning, design, construction, operation, or regulation of dams, make a distinction between large and small dams. In fact, the guidelines apply only to the larger impoundments.

In light of the approaches taken by other agencies with extensive experience in the design, construction and inspection of impoundments, and with similar safety and environmental concerns to those of OSMRE under SMCRA, there is a sound basis for adopting a size distinction that provides for more stringent requirements for larger impoundments and less stringent standards for smaller impoundments that have not otherwise been determined to be hazardous. The SCS Design Guide 378, the SCS Technical Release 60, and the Federal Guidelines for Dam Safety have been entered in the Administrative Record for this rule.

In determining which size distinction to use in impoundment design and construction under SMCRA, OSMRE again relies on the Act. Section 516(a) of the Act requires that regulations promulgated under the Act that apply to underground mining not conflict with or supersede regulations (MSHA) issued under the authority of the Federal Coal Mine Health and Safety Act of 1969. Because OSMRE has not identified any

differences between surface mining impoundments and underground mining impoundments that would necessitate differences in the rules governing them, consistency with MSHA rules for impoundments associated with both types of mining is warranted.

Furthermore, section 201(c)(12) of the Act directs OSMRE to cooperate with other Federal agencies to minimize duplication of inspections, enforcement, and administration of the Act. While the cut-off for the size distinction for impoundments could be higher or lower, the MSHA standard is reasonable and, in the absence of compelling reasons to the contrary, regulatory consistency is enhanced by OSMRE using the same standard. The uniformity and consistency accomplished by applying MSHA size criteria benefits all parties concerned with or affected by the regulation of impoundment structures by MSHA and OSMRE.

In proposing to retain MSHA criteria in § 816.49(a)(1), OSMRE is being more stringent in choosing a specific size distinction than both the SCS and the Federal Coordinating Council for Science, Engineering and Technology. Under SCS criteria, some impoundments as high as 35 feet may be treated as small structures. According to the Federal Coordinating Council's size distinction, impoundments must be either 25 feet high or contain at least 50 acre-feet of storage capacity for the Federal Guidelines for Dam Safety to be applicable. Under MSHA criteria, any impoundment that is over 20 feet or contains at least 20 acre-feet of storage is considered large enough to be treated as potentially hazardous and, therefore, subject to MSHA's regulations.

Furthermore, OSMRE proposes to build in an additional safeguard whereby a small impoundment would be subject to the more stringent stability requirements for large impoundments in § 816.49(a)(3) if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage. This provision would link the criteria for determining if an impoundment is potentially hazardous directly to the purpose of SMCRA. By enabling the regulatory authority to require that a small impoundment meet the more stringent stability standards for large impoundments, the provision covers those potentially hazardous small impoundments that may not be hazardous to miners under MSHA criteria, but may pose a threat to other populations or property.



*Sections 816.49(a)(3)/817.49(a)(3)  
Stability.*

Proposed § 816.49(a)(3)(i) would require that impoundments meeting the size or other criteria of 30 CFR 77.216(a) or located where failure may cause loss of life or serious property damage have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2 (see 3. *Stability* in "Background").

For small impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except coal mine waste impounding structures, and not located where failure may cause loss of life or serious property damage, § 816.49(a)(3)(ii) would require a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. Neither MSHA nor the SCS have established any safety factors for small structures. MSHA does not regulate small structures; and, although the SCS recommends design standards for small structures, such as upstream and downstream side slopes, it does not suggest safety factors.

OSMRE selected the 1.3 safety factor for small impoundments based on the design manual for coal refuse disposal facilities (U.S. Mining Enforcement and Safety Administration, 1975). The manual suggests a 1.3 safety factor for new coal refuse embankments that have a low hazard potential (p. 5.144). These are structures located in rural or agricultural areas where failure would cause only slight damage, such as to farm buildings, forests, agricultural land, or minor roads. Because coal mine waste impounding structures are, generally, of greater concern from a hazard standpoint than other impoundments, and because the manual considers the 1.3 safety factor to be adequate for coal refuse impounding structures that have a low hazard potential, OSMRE believes that this is a reasonable safety factor for other impoundments with low hazard potential. However, because of the greater safety concerns relative to coal mine waste impounding structures, OSMRE retains the existing requirement in § 816.81(c)(2) whereby such structures must attain a minimum static safety factor of 1.5, regardless of their size.

In addition, under a new provision being proposed in § 816.49(a)(3), a small impoundment would be subject to the more stringent stability requirements for large impoundments specified in § 816.49(a)(3) if the regulatory authority determines that it is located where failure may cause loss of life or serious property damage. This additional

safeguard would link the criteria for determining if an impoundment is potentially hazardous directly to the purpose of SMCRA. By enabling the regulatory authority to require that a small impoundment meet the more stringent stability standards for large impoundments, the provision covers those potentially hazardous small impoundments that may not be hazardous to miners under MSHA criteria, but may pose a threat to other populations or property.

*Sections 816.49(a)(5)(i)/817.49(a)(5)(i)  
Foundations.*

Proposed § 816.49(a)(5)(i) would require that the foundation and abutments for impounding structures be stable during all phases of construction and operation, and be designed based on adequate and accurate information on the foundation conditions (see 4. *Foundations* in "Background"). Foundations and abutments must be stable for both small and large impoundments, but since it is possible for small impoundments to achieve the required safety factor under a much wide range of conditions, for small impoundments greater discretion is allowed in foundation evaluation.

The rule would require that, for impoundments meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation and any necessary laboratory testing of foundation material be performed to determine the design requirements for foundation stability. The rule would not stipulate specific tests necessary for each site, but would allow the design engineer to choose whatever testing and investigation were necessary to determine that the foundation of the structure was stable. The rule also would allow the design engineer to determine if it was necessary to conduct laboratory tests of foundation material, dependent upon whether tests of similar material have already been conducted.

*Sections 816.49(a)(8)/817.49(a)(8)  
Permanent and Temporary  
Impoundment Spillways.*

Proposed § 816.49(a)(8) would require that impoundments include either a combination of principal and emergency spillways or a single spillway designed and constructed to safely pass the applicable design precipitation event (see 2. *Spillways* in "Background").

Section 816.49(a)(8) would authorize the regulatory authority to approve the design of an impoundment that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the

operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the impoundment is located where failure would not be expected to cause loss of life or serious property damage. OSMRE believes that this new provision would be useful for those impoundments where the runoff area is small, or where pumps or a decant structure would be used to control the water level in the facility. OSMRE believes that current, prudent, engineering practice requires that at least 90 percent of the water stored during the design precipitation event be removed within the 10-day period following the design precipitation event. OSMRE welcomes comments on the suitability of this provision.

Section 816.49(a)(8) would also include a provision requiring that "if an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined." This is being proposed to maintain consistency with the proposed revisions concerning open channel spillways for sedimentation ponds in Section 816.46(c)(2).

Proposed § 816.49(a)(8)(i) would require that large impoundments (those meeting the size or other criteria of § 77.216(a) of this title) be able to pass a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority. Proposed § 816.49(a)(8)(ii) would require that small impoundments be able to pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

The proposed rule would remove existing § 816.49 (b)(7) and (c)(2), which stipulate two different design precipitation events depending on whether an impoundment is permanent or temporary. Proposed § 816.49(a)(8) (i) and (ii) would make the design precipitation event dependent upon whether an impoundment is large or small, respectively, rather than whether it is permanent or temporary.

The proposed 100-year, 6-hour design precipitation event for large impoundments under § 816.46(a)(8)(i) is the same as proposed in § 816.46(c)(2)(i) for large sedimentation ponds. Likewise, the proposed 25-year, 6-hour design precipitation event for small impoundments under § 816.49(a)(8)(ii) is the same as proposed in § 816.46(c)(2)(ii) for small sedimentation ponds. The proposed changes would require that all



impounding structures, except for large structures constructed of coal mine waste or intended to impound coal mine waste, be designed to meet one of the two specified precipitation events depending on whether they were large or small. See proposed § 816.84(b)(2)/817.84(b)(2) for the design events that apply to large coal mine waste impounding structures.

*Sections 816.49(a)(10)/817.49(a)(10)  
Inspections for impoundments.*

Proposed § 816.49(a)(10)(iv) would authorize a qualified registered professional land surveyor to inspect, certify and submit the report required for any temporary or permanent impoundment that does not meet the size or other criteria of 30 CFR 77.216(a), except as to coal mine waste impounding structures (see 6. *Inspections of impoundments in "Background"*). The proposal would not allow land surveyors to certify coal mine waste impounding structures. These are covered by § 816.84. OSMRE believes that the more complicated design and construction requirements of coal mine waste impounding structures necessitate certification by a professional engineer.

Provisions for the preparation and content of inspection reports in § 816.49(a)(10)(ii) also would be revised to reference the proposed authority of land surveyors to provide a certified report to the regulatory authority. The proposed language in this section that the impoundment has been "constructed and/or maintained" as designed differs from the language in the 1983 rule which reads "constructed and maintained." This proposed change is intended to make clear that the construction will not necessarily have to be recertified every time an inspection is conducted. The proposed rule also would require that the land surveyor be experienced in the construction of impoundments to be consistent with the experience requirement for professional engineers in § 816.49(a)(10).

The proposed changes in paragraph (a)(10)(ii) and new paragraph (a)(10)(iv) are not to be confused with the provision in the introductory language proposed in section (a)(10) allowing inspections by a "qualified professional specialist, under the direction of a professional engineer." The requirement in the introductory language is retained from the 1983 rule. Under proposed paragraphs (a)(10)(ii) and (a)(10)(iv), the "qualified registered professional land surveyor" would be authorized to conduct certain inspections and certify reports independently. Under the provision in the introductory language in

paragraph (a)(10), the "qualified professional specialist" could only perform inspections under the direction of a "professional engineer."

*Sections 816.84(b)(2) and (f)/817.84(b)(2) and (f) Coal mine waste impounding structure spillways.*

Because the spillway requirements for coal mine waste impounding structures are based on the spillway design requirements for permanent and temporary impoundments in § 816.49(a)(8), the proposed changes in § 816.49(a)(8) necessitate proposed changes to § 816.84(b)(2). Rather than require a combination of principal and emergency spillways, proposed § 816.84(b)(2) would require that each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority (see 2. *Spillways in "Background"*). The design precipitation event would be increased from a 100-year, 6-hour event to the probable maximum precipitation of a 6-hour event to be consistent with the MSHA guidelines. The probable maximum precipitation is the amount of rainfall that has been determined by meteorologists to represent the maximum storm potential that can be expected for any specific area and in every instance is greater than a 100-year, 6-hour storm.

OSMRE believes there is no need to require spillways for impounding structures so long as they are designed and constructed in accordance with the requirements of §§ 816.49 and 816.84. Under § 816.84(e), such structures shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period. Proposed § 816.84(f) requires that, for such structures, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

*Reference Materials*

Reference material used to develop this proposed rule is as follows:

U.S. Soil Conservation Service, 1985, Earth Dams and Reservoirs: Technical Release 60.

U.S. Soil Conservation Service, 1985, Pond: Practice Standard 378.

U.S. Mining Enforcement and Safety Administration, 1975, Engineering and design manual—coal refuse disposal facilities (Prepared by D'Appolonia Consulting Engineers, Inc., Pittsburgh, Pa.).

Federal Coordinating Council for Science, Engineering and Technology, 1979, Federal Guidelines for Dam Safety.

*Effect in Federal Program States and on Indian Lands*

The proposed rule would apply through cross-referencing in those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule also would apply through cross-referencing to Indian Lands under the Federal program for Indian lands as provided in 30 CFR Part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

**IV. Procedural Matters**

*Federal Paperwork Reduction Act*

The information collection requirements in Parts 780 and 784 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers 1029-0036 and 1029-0039, respectively. The information collection requirements in Part 816 have been submitted to OMB for approval. The information collection requirements for Part 817 will be submitted to OMB for approval by November 1, 1987.

The information is needed to meet the requirements of sections 515 and 516 of Pub. L. 95-87, and will be used by the regulatory authority in monitoring and inspecting impoundments associated with surface and underground mining. The obligation to respond is mandatory.

*Executive Order 12291 and Regulatory Flexibility Act*

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish



between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

#### *National Environmental Policy Act*

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSMRE Administrative Record at the address specified previously (see "ADDRESSES"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

#### *Author*

The principal author of this rule is Robert A. Wiles, P.E., with assistance from Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-1502 (Commercial or FTS).

#### *List of Subjects*

##### *30 CFR Part 780*

Reporting and recordkeeping requirements, Surface mining.

##### *30 CFR Part 784*

Reporting and recordkeeping requirements, Underground mining.

##### *30 CFR Part 816*

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

##### *30 CFR Part 817*

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly it is proposed to amend 30 CFR Parts 780, 784, 816 and 817 as set forth below.

Dated: June 20, 1987.

James E. Cason,

Deputy Assistant Secretary for Land and Minerals Management.

#### **PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

1. The authority citation for part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq.; Pub. L. 100-34; and 16 U.S.C. 470 et seq.

2. Section 780.25 is amended by revising paragraph (c) to read as follows:

##### **§ 780.25 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.**

\* \* \* \* \*

(c) *Permanent and temporary impoundments.* (1) Permanent and temporary impoundments shall be designed to comply with the requirements of § 816.49 of this chapter.

(2) Each plan for an impoundment shall comply with the requirements of the Mine Safety and Health Administration, §§ 77.216-1 and 77.216-2 of this title. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall be submitted to the regulatory authority as part of the permit application.

(3) For impoundments not meeting the size or other criteria of § 77.216(a) of this title and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish engineering design standards for small impoundments through the State program approval process in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for small impoundments specified in § 816.49(a)(3)(ii) of this chapter.

\* \* \* \* \*

#### **PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN**

3. The authority citation for Part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq.; Pub. L. 100-34; and 16 U.S.C. 470 et seq.

4. Section 784.16 is amended by revising paragraph (c) to read as follows:

##### **§ 784.16 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.**

\* \* \* \* \*

(c) *Permanent and temporary impoundments.*

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of § 817.49 of this chapter.

(2) Each plan for an impoundment shall comply with the requirements of the Mine Safety and Health Administration, §§ 77.216-1 and 77.216-2 of this title. The plan required to be submitted to the District Manager of MSHA under 77.216 of this title shall be

submitted to the regulatory authority as part of the permit application.

(3) For impoundments not meeting the size or other criteria of § 77.216(a) of this title and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish engineering design standards for small impoundments through the State program approval process in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for small impoundments specified in § 817.49(a)(3)(ii) of this chapter.

\* \* \* \* \*

#### **PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES**

5. The authority citation for Part 816 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq.; and Pub. L. 100-34.

6. Section 816.46 is amended by revising paragraphs (b)(3) and (c)(2) to read as follows:

##### **§ 816.46 Hydrologic balance: Siltation structures**

\* \* \* \* \*

(b) \* \* \*

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

\* \* \* \* \*

(c) \* \* \*

(2) *Spillways.* Sedimentation ponds shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (c)(2)(i) or (c)(2)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined. The regulatory authority may approve the design of a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified



registered professional engineer that the sedimentation pond will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the sedimentation pond is located where failure would not be expected to cause loss of life or serious property damage.

(i) Sedimentation ponds meeting the size or other qualifying criteria of § 77.216(a) of this title shall comply with all the requirements of that section, and shall have sufficient spillway capacity to safely pass a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) Sedimentation ponds not meeting the size or other qualifying criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

7. Section 816.49 is amended by revising paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(8), the introductory text of paragraph (a)(10), and paragraphs (a)(10)(ii); and adding paragraph (a)(10)(iv); removing paragraphs (b)(7) and (c)(2); and redesignating paragraph (c)(1) as paragraph (c) to read as follows:

**§ 816.49 Impoundments.**

(a) \* \* \*

(1) Impoundments meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

(3) *Stability.* (i) Impoundments meeting the size or other criteria of § 77.216(a) of this title or located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with a steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not meeting the size or other criteria of § 77.216(a) of this title and not located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

(5) *Foundation.* (i) Foundations and abutments for impounding structures shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For impoundments meeting the size or other criteria of § 77.216(a) of

this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability.

(8) *Spillways.* Impoundments shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grasslined. The regulatory authority may approve the design of an impoundment that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the impoundment is located where failure would not be expected to cause loss of life or serious property damage.

(i) For large impoundments meeting the size or other criteria of § 77.216(a) of this title, the design precipitation event is a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) For small impoundments not meeting the size or other criteria of § 77.216(a) of this title, the design precipitation event is a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(10) *Inspections.* Except as noted in paragraph (a)(10)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist, under the direction of a professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) of this section, shall promptly, after each inspection, provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and

this chapter. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the size or other criteria of § 77.216(a) of this title, and certify and submit the report required by paragraph (a)(10)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 of this chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

8. Section 816.84 is amended by revising paragraph (b)(2) and adding paragraph (f) to read as follows:

**§ 816.84 Coal mine waste: Impounding structures.**

(b) \* \* \*

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

(f) For impounding structures constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

**PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES**

9. The authority citation for Part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq.; and Pub. L. 100-34.



10. Section 817.46 is amended by revising paragraphs (b)(3) and (c)(2) to read as follows:

**§ 817.46 Hydrologic balance: Siltation structures.**

\* \* \* \* \*

(b) \* \* \*

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to prepare and certify plans in accordance with § 784.16(a) of this chapter, a qualified registered professional land surveyor, to be constructed as designed and as approved in the reclamation plan.

\* \* \* \* \*

(c) \* \* \*

(2) *Spillways.* Sedimentation ponds shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (c)(2)(i) or (c)(2)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grass-lined. The regulatory authority may approve the design of a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the sedimentation pond will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the sedimentation pond is located where failure would not be expected to cause loss of life or serious property damage.

(i) Sedimentation ponds meeting the size or other qualifying criteria of § 77.216(a) of this title shall comply with all the requirements of that section, and shall have sufficient spillway capacity to safely pass a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) Sedimentation ponds not meeting the size or other qualifying criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

\* \* \* \* \*

11. Section 817.49 is amended by revising paragraphs (a)(1), (a)(3),

(a)(5)(i), (a)(8), the introductory text of paragraph (a)(10), and paragraphs (a)(10)(ii); and adding paragraph (a)(10)(iv); removing paragraphs (b)(7) and (c)(2); and redesignating paragraph (c)(1) as paragraph (c) to read as follows:

**§ 817.49 Impoundments.**

(a) \* \* \*

(1) Impoundments meeting the size or other criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section.

\* \* \* \* \*

(3) *Stability.* (i) Impoundments meeting the size or other criteria of § 77.216(a) of this title or located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not meeting the size or other criteria of § 77.216(a) of this title and not located where failure may cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

\* \* \* \* \*

(5) *Foundation.* (i) Foundations and abutments for impounding structures shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For impoundments meeting the size or other criteria of § 77.216(a) of this title, foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability.

\* \* \* \* \*

(8) *Spillways.* Impoundments shall include either a combination of principal and emergency spillways or a single spillway that shall be designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(8)(i) or (a)(8)(ii) of this section. If an open channel single spillway is used, it shall be of nonerodable construction, capable of maintaining sustained flows, and not earth- or grasslined. The regulatory authority may approve the design of an impoundment that relies primarily on storage to control the runoff from the design precipitation event in the absence of an adequate, or any, spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the

impoundment will safely control the design precipitation event, the water from which shall then be safely removed, in accordance with current, prudent, engineering practices, and the impoundment is located where failure would not be expected to cause loss of life or serious property damage.

(i) For large impoundments meeting the size or other criteria of § 77.216 (a) of this title, the design precipitation event is a 100-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

(ii) For small impoundments not meeting the size or other criteria of § 77.216(a) of this title, the design precipitation event is a 25-year, 6-hour precipitation event, or greater event as specified by the regulatory authority.

\* \* \* \* \*

(10) *Inspections.* Except as noted in paragraph (a)(10)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist, under the direction of a professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

\* \* \* \* \*

(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(10)(iv) of this section, shall promptly, after each inspection, provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

\* \* \* \* \*

(iv) In any State which authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the size or other criteria of § 77.216(a) of this title, and certify and submit the report required by paragraph (a)(10)(ii) of this section, except that all coal mine waste impounding structures covered by § 816.84 of this chapter shall be certified by a qualified registered professional engineer. The professional land surveyor



shall be experienced in the construction of impoundments.

\* \* \* \* \*

12. Section 817.84 is amended by revising paragraph (b)(2) and adding paragraph (f) to read as follows:

**§ 817.84 Coal mine waste: Impounding structures.**

\* \* \* \* \*

(b) \* \* \*

(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater

event as specified by the regulatory authority.

\* \* \* \* \*

(f) For impounding structures constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

[FR Doc. 87-24219 Filed 10-20-87; 8:45 am]

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# First Report Federal Trade

Wednesday  
October 21, 1987

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## Part IV

### Federal Trade Commission

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16 CFR Part 453

Trade Regulation Rule; Funeral Industry  
Practices; Partial Grant of Petition for  
Statewide Exemption



## FEDERAL TRADE COMMISSION

## 16 CFR Part 453

## Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Partial grant of petition for statewide exemption.

**SUMMARY:** After careful consideration of the Petition for statewide exemption from the Funeral Rule submitted by the State of Arizona, the attachments and public comment, the Commission has: (1) Determined that the state law in many (though not all) respects affords an overall level of protection to consumers as great as or greater than the protection afforded by the Funeral Rule; and (2) granted the Petition in part and denied it in part. The effect of the Commission's action is that the State of Arizona is exempt from all of the provisions of the Funeral Rule except §§ 453.3 (a) through (d) and 453.4.

**EFFECTIVE DATE:** This action is effective as of October 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Raouf M. Abdullah, Attorney, (202) 326-3024, or Carol Jennings, Attorney, (202) 326-3010, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

## SUPPLEMENTARY INFORMATION:

## I. Introduction

On September 24, 1982, the Commission promulgated the Trade Regulation Rule Concerning Funeral Industry Practices ("Funeral Rule" or "Rule").<sup>1</sup> The Rule became fully effective on April 30, 1984.<sup>2</sup>

Essentially, the Funeral Rule requires funeral providers to: (1) Disclose price and other information in person and over the telephone; (2) make truthful representations regarding legal and other requirements; (3) permit consumers to select and purchase only those goods and services they desire; (4) obtain express permission before embalming the deceased for a fee; and (5) refrain from misrepresenting the protective and preservative value of funeral goods and services.

Section 453.9 of the Funeral Rule permits states to apply for exemption

from the Funeral Rule. If, upon application to the Commission by an appropriate state agency, the Commission determines:

(a) There is a state requirement in effect which applies to any transaction to which the Funeral Rule applies; and  
(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the Funeral Rule; then the Funeral Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the state administers and enforces effectively the state requirement.<sup>3</sup>

The Statement of Basis and Purpose for the Funeral Rule states that petitions for exemption will be handled on a case-by-case basis pursuant to § 1.16 of the Commission's Rules of Practice, 16 CFR 1.16.<sup>4</sup>

On June 5, 1984, the attorney general of Arizona, on behalf of the Arizona State Board of Funeral Directors and Embalmers ("Board"), filed a petition for statewide exemption ("Petition") pursuant to § 453.9 of the Commission's Funeral Rule.<sup>5</sup> The Board supplemented the Petition by filings dated February 1, 1985,<sup>6</sup> and March 29, 1985.<sup>7</sup>

On November 6, 1985, the Commission published an analysis of the Arizona Petition in the *Federal Register* seeking public comment on the Petition for sixty days.<sup>8</sup> The comment period ended

January 6, 1986. Four parties filed written comments.<sup>9</sup>

## II. Summary of Conclusions

## A. Level of Protection

The Commission has carefully analyzed relevant Arizona law, the petition, supplemental filings and the comments received during the comment period. The Commission has concluded that the state has a requirement in effect that applies to transactions to which the Commission's Funeral Rule applies, and thus, the Petition meets the threshold transaction requirement of § 453.9(a) of the Funeral Rule. The Commission has concluded, further, that some provisions of Arizona law afford consumers an overall level of protection that is as great as or greater than the level of protection afforded by the Funeral Rule. However, other provisions of the Arizona law do not afford consumers a level of protection as great as the level of protection afforded by the Funeral Rule. Last, the Commission has concluded that the state of Arizona has demonstrated that it administers and enforces the state mortuary laws, rules and regulations effectively.

The Commission has set forth below specific findings and conclusions to illustrate the basis for the Commission's determination that the state of Arizona is entitled to a partial exemption from the Funeral Rule.<sup>10</sup>

## 1. The Absence From State Law of an Anti-Tying Provision

Section 453.4(b)(1) of the Funeral Rule specifically prohibits funeral providers from conditioning ("tying" or "bundling") the furnishing of any funeral good or service upon the purchase of any other funeral good or service.

In the Statement of Basis and Purpose, the Commission noted that a key source of consumer injury was the fact that a significant number of funeral providers required that consumers purchase bundled or prepackaged funerals.<sup>11</sup> By

<sup>1</sup> This provision of the Funeral Rule allows the Commission to grant full or partial exemptions from the Funeral Rule. See also Statement of Basis and Purpose for the Funeral Rule ("SBP"), 47 FR 42260, 42287 (Sept. 24, 1982) (the Commission states that § 453.9 of the Funeral Rule permits states to receive partial or full exemptions from the Funeral Rule).

<sup>2</sup> SBP at 42287. Because § 1.16 of the Commission's Rules of Practice does not apply solely to petitions for statewide exemption from trade regulation rules, the Commission's staff published exemption guidelines to assist states and other interested parties desiring to petition for exemption or to understand how such petitions would be handled. See 50 FR 12521 (Mar. 29, 1985).

<sup>3</sup> The Arizona Petition has been placed on the public record in FTC File No. 215-46 as Document No. XXIII-1.

<sup>4</sup> This document contains a supplement to Arizona's Petition which reflects revisions made to its state laws and regulations. It has been placed on the public record in FTC File No. 215-46 as Document No. XXIII-12.

<sup>5</sup> This document contains a statement from the Board asserting that its laws and regulations are reasonably equivalent to the requirements of the Funeral Rule. It has been placed on the public record in FTC File No. 215-46 as Document No. XXIII-14.

<sup>6</sup> 50 FR 46266 (Nov. 6, 1985).

<sup>7</sup> The comments, which have been placed on the public record in FTC File No. 215-46, were filed by the following parties: (1) Robert R. Corbin, Attorney General of Arizona, Document No. XXIV-20; (2) Tucson Memorial Society, Inc. ("TMS"), Document No. XXIV-21; (3) Continental Association of Funeral and Memorial Societies, Inc. ("CAFMS"), Document No. XXIV-22; and (4) Valley Memorial Society, Inc. ("VMS"), Document No. XXIV-23.

<sup>8</sup> This discussion is primarily limited to the provisions of state law that the Commission found do not afford consumers a level of protection as great as or greater than the protection afforded by the Funeral Rule. For a discussion of the other areas of state law see the publication of the Commission's analysis of the Petition, 50 FR 46266 (Nov. 6, 1985).

<sup>9</sup> SBP at 42269, 42279.

<sup>10</sup> 47 FR 42260 (Sept. 24, 1982), 16 CFR Part 453.

<sup>11</sup> The Funeral Rule had two effective dates. Those portions of the Funeral Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537 (Oct. 6, 1983). The remainder of the Rule—the portions that impose affirmative obligations on funeral providers—became effective April 30, 1984. 49 FR 559 (Jan. 5, 1984).



bundling the goods and services together, the funeral provider effectively requires the consumer to purchase unwanted items as a condition of purchasing a necessity that only the funeral provider can supply—the disposition of human remains. The prevention of bundling or tying is one of the fundamental purposes of the Funeral Rule.<sup>12</sup> As a result of the Funeral Rule's anti-tying provisions consumers are not required to purchase unwanted or unneeded items.

In contrast to the Funeral Rule, the Arizona state law does not prohibit funeral providers from tying the purchase of one product to the purchase of another product. According to the Petition, however, there are state law provisions that allegedly provide the same protections to consumers as the Funeral Rule's anti-tying provisions. These provisions are: The casket display requirement and the anti-disparagement provision. The casket display requirement requires funeral providers to display all in-stock inexpensive caskets and containers that are regularly offered for sale and prohibits the displaying of these items under less favorable conditions than other caskets or containers.<sup>13</sup> The anti-disparagement provision prohibits disparaging statements about the quality, utility, suitability or durability of inexpensive caskets or containers without a basis in fact.<sup>14</sup>

In light of the importance the Commission places on the right of consumers to purchase only those goods and services they want or need, the Commission concludes that the casket display requirement and anti-disparagement provision do not compensate for permitting funeral providers to bundle funeral goods and services.

Accordingly, the Commission determines that the absence of an anti-tying provision affords consumers a lower level of protection under state law as compared to the Funeral Rule.

## 2. The Absence From State Law of a Requirement to Make Unfinished Wood Boxes or Alternative Containers Available for Direct Cremations

Section 453.4(a)(1) of the Funeral Rule prohibits funeral providers and crematories from requiring that consumers purchase a casket other than an unfinished wood box for direct

cremation. In addition, § 453.4(a)(2) of the Funeral Rule requires funeral providers offering direct cremation to make an unfinished wood box or alternative container available for direct cremation.

The Arizona state law has several provisions addressing caskets for direct cremation. Arizona Rule 303(A)(2) states that it is a deceptive act or practice for a funeral establishment to represent that a casket (other than an unfinished wood box) is required for direct cremations. Additionally, state law does not require the purchase or use of caskets or containers except under certain public health circumstances.<sup>15</sup> State law does not, however, require funeral providers to sell unfinished wood boxes, alternative containers or inexpensive caskets.

In the Statement of Basis and Purpose, the Commission stated that merely prohibiting funeral providers from requiring a casket for cremation and requiring a disclosure that alternatives for caskets are available is insufficient to ensure that consumers will be able to avoid the purchase of expensive containers for direct cremation. Rather, in addition, it was necessary to require funeral providers offering direct cremation to make available for purchase either an unfinished wood box or an alternative container.<sup>16</sup> The Commission further explained that, given the tight time strictures surrounding a direct cremation, the anxiety that can accompany a sudden death, and the fact that a consumer usually will not remove the body of a deceased from the funeral provider which first acquires possession, a simple prohibition on requiring the purchase of caskets is insufficient to ensure the availability of inexpensive containers.<sup>17</sup>

The Commission concludes that the absence from state law of a requirement that funeral providers make unfinished wood boxes or alternative containers available lowers the comparative level of protection under the state law as compared with the protections in the Funeral Rule.

## 3. Point of Sale Disclosures

Section 453.3 of the Funeral Rule requires funeral providers to disclose several items of information, in writing, on the price lists consumers receive at the beginning of the funeral

transaction.<sup>18</sup> These disclosures inform consumers (at the time they are planning arrangements with the funeral provider) that products and services such as embalming, caskets for cremation, and outer burial containers may not be required. These written disclosures further inform consumers that funeral providers are prohibited from misrepresenting legal, cemetery or crematory requirements. During the rulemaking, the Commission concluded that these disclosures on the price lists were needed to alert consumers to their rights and to discourage funeral providers from misrepresenting requirements for certain goods and services.<sup>19</sup>

Arizona Rule 305(A) requires that each funeral establishment, funeral director or embalmer shall provide a casket price list, outside receptacle price list and general price list in the form and manner required by §§ 453.2(b) (2), (3) and (4) of the Funeral Rule. However, Arizona law does not require the price lists to contain the informational disclosures that § 453.3 of the Funeral Rule requires. As a result, under state law consumers do not receive important written disclosures at the point of sale. Arizona law does require certain oral disclosures and prohibits certain misrepresentations.

The Commission concludes that such protections are not comparable to the Funeral Rule's requirement that certain written disclosures be on the price lists. Thus, consumers receive less protection under state law than under the Funeral Rule.

## 4. Arizona Law Includes Provisions Not in Funeral Rule

The following requirements of state law do not have counterparts in the Funeral Rule. Specifically, state law requires funeral establishments to: (1) Display their least expensive caskets in the same general manner as their other caskets are displayed;<sup>20</sup> (2) promptly release human remains upon request of a family member or other authorized person;<sup>21</sup> (3) refrain from making disparaging statements concerning merchandise without a basis in fact;<sup>22</sup> (4) refrain from representing or insinuating that a consumer's concern for price, as reflected in the selection of inexpensive arrangements, reflects a

<sup>15</sup> See A.R.S. section 32-1373(B) and Arizona Rule 307(C). In addition, the Petition cites other provisions regarding merchandise and service selection techniques. However, the Commission finds that these provisions of state law address practices different from caskets for cremation.

<sup>16</sup> SBP at 42281.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 42274.

<sup>19</sup> See generally SBP section II(B), 42274-82.

<sup>20</sup> Arizona Rule 302(A)(2). See SBP at 42290 n. 317.

<sup>21</sup> Arizona Rule 302(A)(9). See SBP at 42289-90.

<sup>22</sup> Arizona Rule 302(A)(9). See SBP at 42290 n. 319.

<sup>12</sup> See SBP at 42260-61, 42269-70, 42279-82.

<sup>13</sup> See Arizona Rule 302(a)(2). Under Arizona Rule 101(8) "inexpensive caskets" are defined to be the least expensive adult caskets held for sale to funeral service customers by a funeral establishment.

<sup>14</sup> See Arizona Rule 302(A)(9).



lack of concern for the deceased, family, neighbors, or friends;<sup>23</sup> (5) mail copies of the price list to callers upon request<sup>24</sup>; and (6) disclose to consumers on the statement of funeral goods and services selected that a casket or container is unnecessary except in certain public health circumstances.<sup>25</sup>

In addition, state law requires each funeral establishment to place a price card on each casket, container and outside receptacle offered for sale.<sup>26</sup> Another feature in state law that is not addressed by the Funeral Rule is the requirement that each funeral establishment provide a copy of the consumer information pamphlet prepared by the Board.<sup>27</sup> Finally, the state law requires funeral establishments to retain the price lists and signed statements of funeral goods and services selected for three years, rather than the one year requirement imposed by the Funeral Rule.<sup>28</sup>

#### 5. The Overall Level of Protection of Arizona Law

The Commission concludes that the level of protection afforded to consumers by Arizona law is as great as or greater than the Funeral Rule in the following areas: (1) Definitions; (2) telephone price disclosures; (3) price disclosures prior to selection; (4) disclosures after arrangements selection; (5) embalming for a fee without prior approval provisions; (6) provisions regarding preservative and protective value claims; (7) cash advance disclosures; (8) services provided without prior approval, and (9) retention of signed statements of funeral goods and services selected.

In addition, Arizona law provides the following significant protections to consumers not provided by the Funeral Rule: (1) Availability of price lists by mail; (2) display of least expensive caskets; (3) required prompt release of remains upon request; (4) prohibition against disparaging remarks; (5) price disclosures on caskets; and (6) distribution of the consumer information pamphlet.

The Commission concludes that the level of consumer protection under Arizona law is not as great as the Funeral Rule in the following areas: (1) Prohibition against tying arrangements in general; (2) ensuring that unfinished

wood boxes and alternative containers are available for direct cremation; and (3) non-price disclosures on the price lists.

#### B. Does the State Administer and Enforce Its Laws Effectively?

The final element of § 453.9 of the Funeral Rule concerns the state's willingness and ability to enforce its laws. In the Statement of Basis and Purpose for the Funeral Rule, the Commission stated that petitions would be evaluated for the effective administration and enforcement of the state regulations as well as for the overall level of protection afforded consumers.<sup>29</sup>

The following information comes from the Petition, was published in the *Federal Register* during the comment period,<sup>30</sup> and was not contradicted by the comments.

Under state law, the Board is empowered to revoke and/or suspend licenses and also impose an administrative penalty as sanctions in any disciplinary action. Specifically, the Board may suspend licenses for up to 90 days for first violations and up to 180 days for a second violation. The funeral establishment's license may be revoked for three or more offenses or for any single offense which results in substantial economic or other injury. In addition, the Board may impose an administrative penalty in a disciplinary action for each offense.

During the five year period ending April 30, 1984, the Board conducted 115 investigations in response to information received about violations of state law. During the same period, the Board also completed 94 compliance inspections, usually conducted at random, to determine whether funeral homes were following Arizona price disclosure requirements. The compliance inspection also included consumer surveys to determine the level of consumer satisfaction.

As a result of these activities, during that five year period the Board initiated eleven enforcement actions—resulting in the imposition of \$8,400 in civil penalties and \$8,267 in restitution payments to consumers. The average civil penalty was \$1,400 and the highest civil penalty imposed was \$2,500. The average consumer restitution payment was approximately \$700 and the highest individual payment was \$2,150. Eight of the Board's enforcement actions occurred during the two year period ending April 30, 1984, resulting in an

aggregate of \$10,863 in civil penalties and consumer payments and one license revocation action.

In addition to the state laws administered by the Board, the Arizona Consumer Frauds Act has been interpreted by state courts to authorize individual consumers to bring private lawsuits for deceptive practices concerning the sale of consumer goods or services.<sup>31</sup>

The Commission concludes that the State of Arizona has demonstrated effective administration and enforcement of the state mortuary laws, rules and regulations.

### III. Determination

#### A. Findings

The Commission determines that:

- (1) There is a state requirement in effect in the State of Arizona that applies to the transactions to which the FTC trade regulation rule concerning funeral industry practices applies;
- (2) The state requirement has met the standard for exemption from all of the Funeral Rule provisions except §§ 453.3 (a) through (d) and 453.4 of the Rule;
- (3) The State of Arizona is granted an exemption from all of the provisions of the Funeral Rule except §§ 453.3 (a) through and including (d) and 453.4, subject to the reporting requirements set out below; and
- (4) The partial exemption will be in effect in the State of Arizona, to the extent specified in this notice, for as long as the State administers and enforces effectively the state requirement.

#### B. Reporting Requirements

The staff's state exemption guidelines recommend that the Commission condition the grant of an exemption on the requirement that the state provide the Commission with notice of any changes in its law, policies or procedures that would significantly affect whether: (1) The state affords consumers an overall level of protection as great as or greater than the level of protection afforded by the Funeral Rule, or (2) the state administers and enforces effectively the state requirement.<sup>32</sup> The exemption guidelines further recommend that the Commission require such reports from the state as the Commission deems necessary or desirable to ensure effective administration and enforcement.<sup>33</sup> The

<sup>23</sup> Arizona Rule 302(A)(12).

<sup>24</sup> Arizona Rule 304(B).

<sup>25</sup> Arizona Rule 307(C).

<sup>26</sup> Arizona Rule 306.

<sup>27</sup> Arizona Rule 308. A draft of this brochure is contained in Exhibit K to the Arizona Petition, *supra* note 3.

<sup>28</sup> Compare Arizona Rule 309 with 16 CFR 453.6.

<sup>29</sup> SBP at 42287.

<sup>30</sup> See *supra* note 6 and the accompanying text.

<sup>31</sup> See, e.g., *Sellinger v. Freeway Mobile Home Sales*, 110 Ariz. 573, 521 P.2d 1119, 62 A.L.R.3d 161 (Sup. Ct. 1974).

<sup>32</sup> 50 FR 12521, 12526 (Mar. 29, 1985).

<sup>33</sup> *Id.*



Commission adopts these recommendations. Accordingly, the grant of the partial exemption from the funeral industry practices trade regulation rule, 16 CFR Part 453, is conditioned on the following requirements:

(1) That the Board (or successor agency) agree to provide the Commission written notice of any significant changes in Arizona statutes, interpretations, regulations, rules, guidelines, policies, procedures, enforcement protocols, staffing levels and any other actions (or omissions) that affect the criteria set forth in § 453.9 of the Funeral Rule;

(2) That the Board (or successor agency) provide the Commission with copies of relevant documents concerning such changes;

(3) That the Board (or successor agency) provide the Commission with a brief written description of how the changes or actions do or do not affect Arizona consumers;

(4) That the Board (or successor agency) submit to the Commission such information and relevant documents within sixty days of the effective date of such changes or actions; and

(5) That the Board (or successor agency) provide the Commission with a brief written enforcement report twelve months after the date the partial

exemption is effective, reporting the number, type and dispositions of the enforcement actions handled by state officials during the intervening period.

#### List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By the direction of the Commission, Commissioner Azcuenaga was recorded as voting in the affirmative with a notation that she dissented from the denial by the Commission of that part of the Arizona petition seeking exemption from the outer burial container disclosure requirement in § 453.3(c)(2) of the rule.

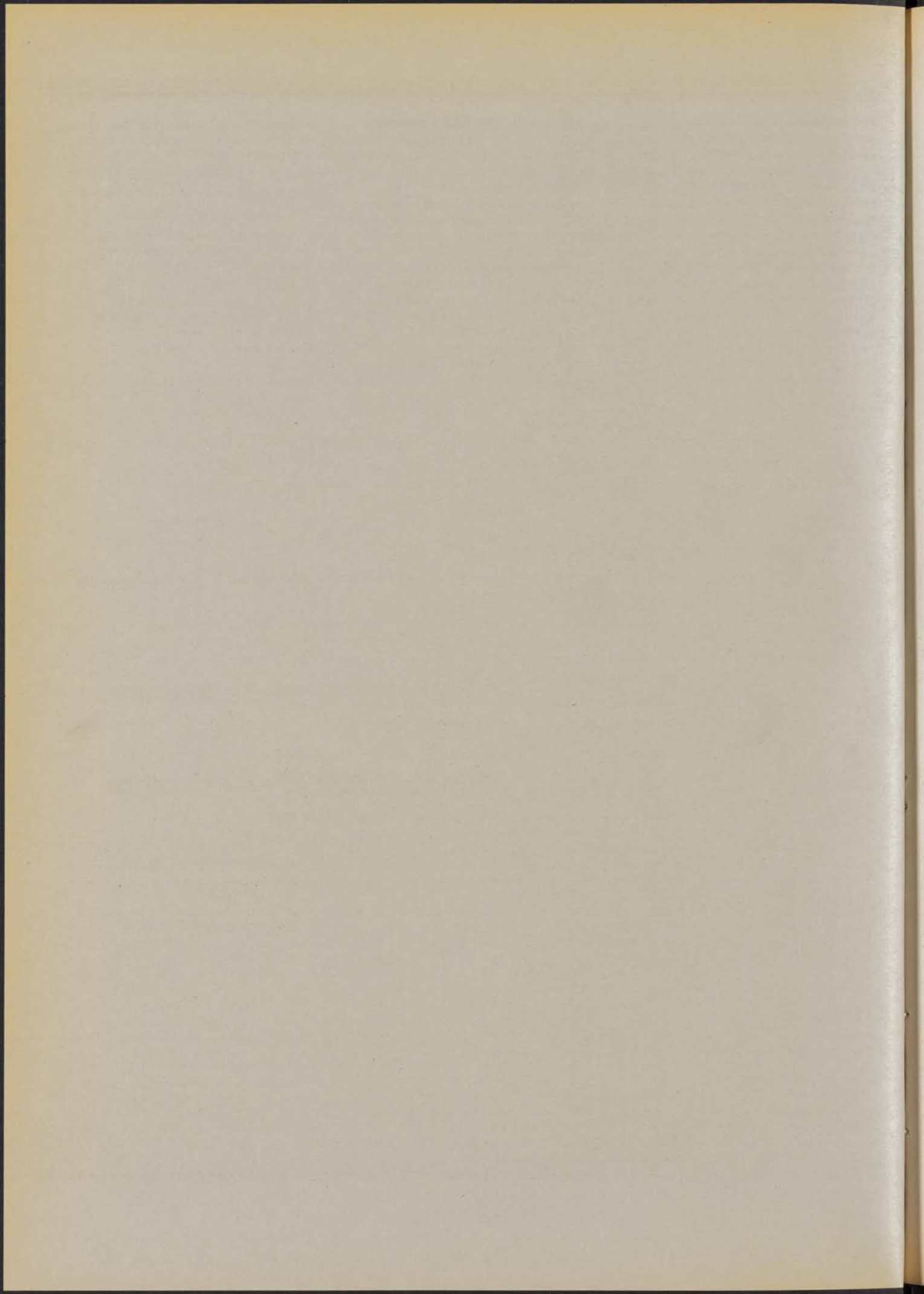
Emily H. Rock,

Secretary.

[FR Doc. 87-24295 Filed 10-20-87; 8:45 am]

BILLING CODE 6750-01-M







# Forest Register

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Wednesday  
October 21, 1987

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## Part V

**Department of Agriculture**  
Forest Service

**Department of the Interior**  
Bureau of Land Management

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Environmental Impact Statement; Mark  
Twain National Forest, MO; Notice



Department of Agriculture

Forest Service

Department of the Interior

Bureau of Land Management

Environmental Impact Statement: Final

Twin National Forest, Rock Valley



## DEPARTMENT OF AGRICULTURE

## Forest Service

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[ES-030-08-4133-09; ES-00157-001]

**Environmental Impact Statement; Mark Twain National Forest, Carter, Oregon and Shannon Counties, MO**

**AGENCY:** Forest Service, USDA and Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of availability of the draft environmental impact statement.

**SUMMARY:** The Doe Run Corporation holds interest in two preference right lease applications filed with the Bureau of Land Management for development and production of lead and associated metals underlying the Mark Twain National Forest, Missouri. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau and USDA-Forest Service in cooperation with the U.S. Fish and Wildlife Service, National Park Service, U.S. Geological Survey, U.S. Army Corps of Engineers and the Missouri Department of Conservation, have prepared a Draft EIS for non-competitive and competitive hardrock mineral leasing for an area encompassing approximately 119,000 acres of National Forest System lands and federally owned minerals. Although the actual lease applications only comprise 3,743 acres, the Draft EIS has been prepared

for an area much larger in anticipation of future leasing activity. The Draft EIS evaluates a wide range of alternatives developed in response to issues raised by the public and concerns expressed by Federal land managers. The Draft has been prepared in collaboration with the approved Mark Twain National Forest Land and Resource Management Plan.

**DATE:** Written comments on the Draft EIS must be received by December 24, 1987. Comments must be sent to: B. Eric Morse, Forest Supervisor, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401.

**ADDRESSES:** *Hearings:* Public hearings to receive comments on the Draft EIS and adequacy of the impact analysis will be held at the following locations:

Public Hearing Locations	Date and Time
Shoenberg Auditorium, Ridgeway Center, Missouri Botanical Garden, 4344 Shaw Street, St. Louis, Missouri.	Dec. 1, 1987, 7:00 p.m.
Hotel Governor Ballroom, 200 Madison, Jefferson City, Missouri.	Dec. 2, 1987, 7:00 p.m.
Gymnasium, Winona High School, Winona, Missouri.	Dec. 3, 1987, 7:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leon Kridelbaugh, Staff Officer for Lands, Minerals, Soils and Watershed, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401; telephone (314)-364-4621. Mr. Vincent Vogt, Assistant District Manager for Solid Minerals, Milwaukee District Office (BLM), 901 Pine Street, Rolla, Missouri 65401; telephone (314)-364-0203.

**SUPPLEMENTARY INFORMATION:** Public reading copies of the Draft EIS are

available for review at the public libraries in Alton, Birch Tree, Mountain View and Winona, Missouri. In addition, copies of the Draft may be inspected at the following locations:

USDA-Forest Service, Supervisor's Office, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401  
 USDA-Forest Service, Doniphan Ranger District, Doniphan, Missouri 63935  
 USDA-Forest Service, Van Buren Ranger District, Van Buren, Missouri 63965  
 USDA-Forest Service, Winona Ranger District, Winona, Missouri 65588  
 USDA-Forest Service, Eastern Region, 310 W. Wisconsin Avenue, Suite 600, Milwaukee, Wisconsin 53203  
 Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304  
 Bureau of Land Management, Milwaukee District Office, 310 W. Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53201-0631  
 Bureau of Land Management, Division of Solid Minerals, 901 Pine Street, Rolla, Missouri 65401.

Floyd J. Marita,

Regional Forester, USDA-Forest Service.

Date: October 6, 1987.

G. Curtis Jones, Jr.,

Director, Eastern States Office, Bureau of Land Management.

Date: October 2, 1987.

[FR Doc. 87-24343 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-GJ-M







# Environmental Protection Agency

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Wednesday  
October 21, 1987

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## Part VI

### Environmental Protection Agency

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40 CFR Part 310

Reimbursement to Local Governments  
for Emergency Response to Hazardous  
Substance Releases; Interim Final Rule



# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 310

[FRL-3254-3]

### Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today is issuing an interim final rule to provide reimbursement to local governments for costs of temporary emergency measures taken to prevent or mitigate injury to human health or the environment. This reimbursement program is authorized under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by § 123 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, hereinafter referred to as CERCLA. This regulation should help to alleviate significant financial burden on local governments for costs incurred in responding to releases or threatened releases of hazardous substances. CERCLA requires, however, that reimbursement must not supplant local funds normally provided for response.

EPA believes that today's interim final rule is both consistent with the intent of Congress and appropriate for effective emergency response at the local level. The Agency seeks comments on the overall approach to this rule and on specific components of the approach outlined.

**DATES:** Comments must be submitted on or before December 21, 1987. Effective October 21, 1987. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of October 21, 1987.

**ADDRESSES:** Comments on this interim final rule should be sent to the Superfund Docket Clerk, ATTN: Docket Number 123 LGR, (WH-548D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public docket is located in Room LG-100 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments must be made by calling (202) 382-3046. The public may copy a maximum of 50 pages of material from the docket at no cost. Additional copies cost \$.20/page.

### FOR FURTHER INFORMATION CONTACT:

For general information on the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986 and the National Contingency Plan (40 CFR Part 300) contact the RCRA/CERCLA Hotline at 1-800-424-9346 (toll free) or, in the Washington, DC, metropolitan area, 382-3000.

For information on specific aspects of this interim final rule for reimbursement to local governments contact: Karen Burgan, Project Officer, Emergency Response Division, (WH-548B), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

### SUPPLEMENTARY INFORMATION:

#### Preamble Outline

- I. Statutory Authority
- II. Background
  - A. Overview of the Superfund Program
  - B. Congressional Intent
- III. Approach to This Rulemaking
- IV. Analysis of Major Issues
  - A. Intent of the Reimbursement Regulation
  - B. Basis of Reimbursement Decisions
  - C. State Role
- V. Reimbursement Process
  - A. Response to Release
  - B. Contact with the Federal Government
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  - D. Reimbursement Request
  - E. Preliminary Screening
  - F. Evaluation of Requests
- VI. Section-By-Section Analysis
  - A. Subpart A—General
    1. § 310.05 Purpose, Scope and Applicability
    2. § 310.10 Abbreviations and § 310.11 Definitions
    3. § 310.12 Penalties
  - B. Subpart B—Reimbursement
    1. § 310.20 Eligibility for Reimbursement
    2. § 310.30 Requirements for Requesting Reimbursement
    3. § 310.40 Allowable and Unallowable Costs
  - C. Subpart C—Procedures for Filing and Processing Reimbursement Requests
    1. § 310.50 Filing Procedures
    2. § 310.60 Verification and Reimbursement
    3. § 310.70 Records Retention
    4. § 310.80 Payment of Approved Reimbursement Requests
    5. § 310.90 Disputes Resolution
- VII. Regulatory Analyses
  - A. Executive Order No. 12291
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
- VIII. List of Subjects in 40 CFR Part 310

#### I. Statutory Authority

Section 123 of CERCLA directs the EPA Administrator to develop a regulation containing procedures for reimbursing local governments for expenses incurred in carrying out temporary emergency measures in response to hazardous substance

threats. These measures must be necessary to prevent or mitigate injury to human health or the environment from a release or threatened release of a hazardous substance or a pollutant or contaminant. Temporary emergency measures may include such activities as erecting security fencing to limit access, responding to fires and explosions and other measures that require immediate response at the local level. CERCLA specifically limits reimbursement to \$25,000 per single response and requires that reimbursement not supplant local funds normally provided for response. Any general purpose unit of local government that incurs costs in response to a release or threatened release at a facility within its jurisdiction may apply for reimbursement. Section 111 of CERCLA specifies that not more than 0.1 percent (or a maximum of \$8.5 million) of the total amount appropriated from the Fund may be used for local government reimbursement.

The responsibility for promulgating today's interim final rule rests with the Administrator for EPA. The authority to receive, evaluate and make determinations regarding requests for reimbursement and to issue payments to qualified applicants has been delegated to the Assistant Administrator for the Office of Solid Waste and Emergency Response. Today's rulemaking establishes how this reimbursement program will work.

#### II. Background

##### A. Overview of the Superfund Program

CERCLA was originally enacted in 1980 and establishes the authority to tax the chemical and petroleum industries to finance a \$1.6 billion response trust fund (the Superfund or Fund). CERCLA provides broad Federal authority to respond directly to releases or threatened releases of hazardous substances and pollutants or contaminants that may endanger public health or welfare or the environment. EPA is primarily responsible for implementing the Superfund program. On October 17, 1986, President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986. These Amendments add \$8.5 billion to the Superfund Trust Fund and broaden the Federal Government's response authority.

Under the Superfund program, EPA may take legal action to force those responsible for hazardous substance releases to clean them up or to reimburse EPA for the costs of cleanup. EPA also can pay for the cleanup of hazardous waste releases when those



responsible for such releases cannot be found or are unwilling or unable to conduct a cleanup themselves.

Response actions may be taken to address such incidents as illegal disposal of hazardous substances, improper handling or disposal of hazardous substances at landfills or industrial areas, spills of hazardous substances when a truck or train overturns, or discharges of hazardous substances into the air or water during a fire or other accident. Response actions may include, but are not limited to: removing hazardous substances from the release site to an EPA-approved, licensed hazardous waste facility for treatment, containment or destruction; constructing fences, posting warning signs or taking other security precautions necessary to control access; providing a temporary alternate water supply to local residents; temporarily relocating affected residents; or containing the hazardous substance on site so that it can safely remain there and present no further problem.

CERCLA responses usually are joint efforts by Federal, State and local agencies. Since State and local public safety and health organizations are normally the first government representatives at the scene of a hazardous substance release, they play a critical role in providing temporary emergency measures. These temporary emergency measures may include security, control of the release source, containment of the substances released, control of contaminated runoff and similar activities that must be performed immediately to prevent or mitigate injury to human health or the environment. The National Contingency Plan (NCP, found at 40 CFR Part 300), the main Federal regulation that guides the Superfund program, outlines the roles and responsibilities of each Federal agency involved in responding to releases of hazardous substances and describes State and local participation in hazardous substance releases. In addition, the NCP establishes procedures that are to be followed in conducting appropriate response actions.

#### B. Congressional Intent

The original Superfund law did not provide reimbursement to local governments for costs incurred in conducting temporary emergency measures. SARA added a new section to the law that specifically allows such reimbursement, although the Conference Report makes it clear that "reimbursement under this provision

shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting." With the specific requirement in section 123 that reimbursement not supplant local funds normally provided for response, Congress intends that local governments continue to bear some share of expenses for providing temporary emergency measures. However, Congress recognized that in the past, conducting such response activities has placed a significant financial burden on some local governments. Reimbursement under section 123 can provide some financial relief (limited to \$25,000 per single response) to local governments most seriously affected by costs above and beyond those incurred routinely and traditionally. This \$25,000 cap on individual responses plus the limited availability of funds for the program may not allow EPA to reimburse local governments for all responses that may qualify.

#### III. Approach to this Rulemaking

Because this rule falls under the grants, benefits and contracts exemption of section 553 of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), the Agency is not required to solicit public comment before the rule becomes effective. In addition, the Agency may make the rule effective immediately upon publication.

In developing this interim final rule, EPA incorporated substantial input from officials of fire departments, police departments and emergency services and other representatives of local governments, in an effort to make the rule realistic and practical. Those who offered comments and suggestions are described below. The interim final approach is designed to allow the Agency to implement the reimbursement program and to make reimbursement monies available quickly, while continuing to solicit comments. Public comments are invited and should be sent to the address listed in the "Address" section above. Comments received by December 21, 1987 will be considered in the final rule.

EPA's approach to this rulemaking included making use of appropriate features of parallel programs and precedents, where possible. EPA began investigating other Federal and State programs early in the regulatory development process to determine their possible applicability to this reimbursement program. Table 1 depicts representative programs considered by

the Agency. Research into these programs provided useful information for several reasons. First, this information helped both to identify issues and to suggest regulatory options. The Asbestos in Schools Hazard Abatement Program, for example, provided a model for evaluating requests for reimbursement. Second, the regulations associated with these programs suggested possible regulatory frameworks for the reimbursement rule. For instance, the Superfund response claims regulation, now being drafted, had already addressed some of the issues posed in section 123. Third, analysis of these programs helped highlight implementation considerations and alternatives. The Pesticides Indemnification Program, for example, pointed to some internal forms and procedures that could expedite reimbursement. Finally, detailed analyses of these programs, supplemented by research on Superfund removal actions involving response by local governments, helped EPA outline the basic regulatory framework leading to today's interim final rule.

TABLE 1.—REPRESENTATIVE FEDERAL AND STATE PROGRAMS OF POTENTIAL INTEREST

Agency/State	Program
EPA.....	Asbestos in Schools Hazard Abatement.
EPA.....	Construction Grants Reimbursement.
EPA.....	Pesticides Indemnification.
EPA.....	Superfund Response Claims.
EPA.....	Superfund Technical Assistance Grants.
Federal Emergency Management Agency.	Federal Disaster Assistance.
Department of State.....	Protection of Foreign Missions.
Department of Agriculture.	Casual Firefighter.
California.....	Emergency Response Fund.
New York.....	Spill Prevention and Response Fund.

EPA also held discussions with local officials in five areas of the country to gain the perspective and insights of frontline response officials in an effort to develop a rule that realistically addresses local concerns and that could be implemented in a practical way. The five meetings were held in Baton Rouge, LA; Chattanooga, TN; Edison, NJ; Jefferson, OH; and Los Angeles, CA. These localities were selected as meeting locations because they represent a range of community sizes and emergency response capabilities and because local officials in and around these communities expressed interest and willingness to participate when asked.



#### IV. Analysis of Major Issues

##### A. Intent of the Reimbursement Regulation

The overall purpose of the reimbursement program is to provide some financial relief to local governments in conducting temporary emergency measures in response to hazardous substance threats. This response may be conducted entirely by a local government or may be a response involving State or Federal assistance. The intent of today's interim final rule is to alleviate significant financial burden on a local government. EPA believes that this approach achieves the intent of section 123 of CERCLA to channel the small pool of reimbursement monies to the most deserving applicants and local governments must demonstrate that a response has created expenses that significantly exceed the funds normally available for temporary emergency services. This approach also is consistent with the overall policies and goals of the Superfund program. The Agency wishes to emphasize, however, that reimbursement under section 123 does not eliminate the requirement to try to identify potentially responsible parties (PRPs) and attempt cost recovery from liable parties, but is available as a measure of financial relief when responsible party search and cost recovery actions have proven unsuccessful.

EPA considered two other approaches that ultimately were rejected. The first of these alternatives was to use the reimbursement program to encourage local governments to undertake smaller response actions, thereby reserving Agency resources for complex responses. Under this alternative, Federal manpower resources would be conserved for responses outside the scope of local and State capabilities. Local governments might have been encouraged to enhance their response capabilities and become more skilled at conducting small response actions. The limited funds available for the reimbursement program and the resulting uncertainty of reimbursement, however, might not have provided adequate incentive for local governments to become more assertive in undertaking small response actions. Some communities with poorly developed response programs might not have had the capability to attempt even small responses to hazardous substance releases. EPA believes that this approach also would have generated an unmanageable number of requests, creating an administrative burden

disproportionate to the total amount of funds to be distributed.

The second alternative EPA considered was to focus the regulation on encouraging localities to assist in responses at Federal-lead cleanup actions. Such an approach would have facilitated greater involvement of local government resources in support of Federal responses. Again, however, the uncertainty of receiving reimbursement may not have provided an adequate incentive for many localities to increase their level of participation in Federal-lead responses. This approach also would have made it difficult to distinguish between equally meritorious applicants based on the broad criterion of participating in Federal-lead responses.

##### B. Basis of Reimbursement Decisions

As discussed above, EPA has determined that the reimbursement money should be distributed to applicants who demonstrate the greatest financial burden from conducting emergency response actions that adhere to the overall policies and goals of the Superfund program. However, due to the limited funds available for the reimbursement program (a maximum of 0.1 percent of the total amount appropriated for the Superfund over five years, or approximately \$8.5 million), not all applicants may actually receive reimbursement monies. For this reason, the Agency needs some basis for determining which requests to reimburse.

EPA has written today's rule so that reimbursement decisions are based primarily on the ratio of eligible response costs to the applicant locality's per capita income adjusted for population, with consideration given to other relevant financial information provided at the applicant's discretion. (For example, such information might include cost data for other hazardous substance responses if the locality has conducted numerous responses over a short period of time.) This approach ensures that communities with limited resources will receive priority in the reimbursement program. Basing reimbursement decisions primarily on per capita income statistics provides an objective method for deciding among requests, while allowing special consideration of other relevant data, such as frequency of recent emergency responses, recent local economic changes or other financially catastrophic events, provides flexibility.

Per capita income statistics are readily available through the Bureau of Census. EPA expects to use the Current Population Reports, Local Population

Estimates, Series P-26, "1984 Population and 1983 Per Capita Income Estimates for Countries and Incorporated Places," published in June 1986 by the U.S. Department of Commerce, Bureau of the Census. This series will be used for the reimbursement program unless and until superseded by more recent data. Additional financial information provided by the applicant should provide the opportunity to consider economic factors that may not be represented accurately in the available income statistics. For example, if significant population shifts have occurred since the last census, the applicant may wish to supply relevant financial data demonstrating the economic effects of that shift upon the community.

EPA initially considered distributing the reimbursement money geographically (i.e., providing reimbursement to a certain number of applicants in each state or Region) to ensure that all areas of the country had access to some of the reimbursement fund. Dividing the reimbursement money this way, however, might not accurately address the most deserving cases nationwide. A second possibility was to reimburse, on a first-come-first-served basis, applicants who meet predetermined criteria. This method could neglect deserving applicants because it would favor reimbursement for responses occurring early in the year.

EPA also considered basing reimbursement decisions on the percentage of a community's annual budget spent on a response. Because budgeting practices vary so greatly from locality to locality, the amounts budgeted would be difficult to compare accurately. This alternative also would favor communities that had allocated few, if any, funds for emergency response activities. This bias would be inconsistent with the intent of the Emergency Planning and Community Right-to-Know Act of 1986 (Title III of SARA) and the overall goals and objectives of the Superfund program. Moreover, evaluating local budgets would have forced EPA to make judgment calls on how communities allocate their funds.

Another option EPA considered was to base reimbursement decisions on the severity and magnitude of the threat posed by the hazardous substance incident. This option would have reflected the overall mission of the Superfund program to dedicate Federal resources to significant and/or National emergencies that require resources outside the scope of State and local capabilities. However, estimates of



potentially affected populations, relative toxicity of the waste and impacts on human health and the environment can be very subjective measurements.

The most flexible option EPA considered was to allow applicants to develop their own rationale for reimbursement in accordance with review guidelines developed by EPA. This option recognized the diversity among hazardous substance release incidents and responses nationwide by allowing local governments to evaluate their own resources and demonstrate that they have assumed a disproportionate financial burden. The severity of the incident could have been incorporated into an applicant's reimbursement rationale. This alternative would have obviated the need for EPA to develop a comprehensive definition of reimbursable financial burden, greatly simplifying the rule development phase of the program. However, program administration would have been very difficult because of the uniqueness of each application and the time required to review, compare and analyze the data submitted by the local governments. This alternative also could have favored more organized applicants with experience in assembling response information efficiently, at the expense of less experienced communities that may have had more deserving claims.

#### C. State Role

Section 123 authorizes reimbursements to local governments for costs incurred in conducting temporary emergency measures. The law does not authorize reimbursement to States. Today's rule precludes States from requesting reimbursement under § 310.20(b) either for themselves or on behalf of political subdivisions within the State. EPA believes this approach will help eliminate the potential for two parties to request reimbursement for the same response.

Local officials and most State officials who offered comments to EPA about developing this rule believed that there should be no administrative role for States in the reimbursement process. Some local officials, however, indicated that States might assist EPA in evaluating reimbursement requests since they may be familiar with the hazardous substance incident and local government response. Further, some States have expressed an interest in receiving copies of reimbursement requests in order to identify local areas in need of financial assistance. In the interest of streamlining the review process, EPA intends to contact the States for information on specific

requests when necessary, but no formal or routine State role is proposed. EPA does not intend, however, for this rule to preclude or interfere with existing State and local response procedures.

#### V. Reimbursement Process

The reimbursement process comprises six steps, each of which is described below. The roles and responsibilities of EPA and the local government in the process are discussed as well.

##### A. Response to Release

The reimbursement process begins with a local government's response to a release or threatened release of hazardous substances or pollutants or contaminants. (Unlike responses to hazardous substances, which cover threats both to human health and to the environment, responses to releases of pollutants and contaminants must specifically address human health threats to qualify for possible reimbursement.) This response may be conducted solely by the local government or in conjunction with State or Federal responders. To be eligible for reimbursement, the response must be consistent with CERCLA, the National Contingency Plan and, if applicable, the local emergency plan prepared under section 303 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of Pub. L. 99-499.

Although temporary emergency measures that local governments take to prevent or mitigate injury to human health or the environment may be reimbursable, it is clear that Congress did not envision that reimbursement monies would be available for activities typically included in a local government's budget. Section 123(b)(2) of the statute specifically requires that reimbursement "not supplant local funds normally provided for response." The conference report on SARA states that reimbursement does not apply to "normal expenditures . . . incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting." The statute also characterizes reimbursable response measures as those requiring "immediate response at the local level." Therefore, the Agency believes that reimbursement may be appropriate for activities such as security, control of the release source, containment of the substances released, control of runoff that would contaminate drinking water sources and similar activities that must be performed within minutes or hours of the release to prevent or mitigate injury to human health or the environment.

EPA does not intend that reimbursement monies be used for emergency response activities that are eligible for funding from other sources. EPA also believes that actions such as ground-water decontamination, ongoing sampling and analysis programs, construction of water treatment facilities or installation of new water lines are outside the scope of the reimbursement program because they do not constitute temporary emergency measures. EPA wishes to make clear that costs of such projects are not reimbursable under this program. Instead, the local government may want to contact the EPA Regional office or the State to determine whether a Cooperative Agreement with the Agency would be appropriate for performing long-term response projects.

##### B. Contact with the Federal Government

Contact with a Federal response authority is a necessary condition for reimbursement under today's interim final rule. The purpose of this contact requirement is to give EPA or the U.S. Coast Guard (USCG) an opportunity to ascertain if Federal response action is appropriate in this instance. For this reason, contact is required as soon as possible, but not later than 24 hours after response initiation.

Contact must be made in one of two ways. The local government can use normal response communication channels to alert EPA or the USCG to the release. Normal channels include notification to the National Response Center (NRC) or established Regional networks that link local agencies with State agencies and ultimately with EPA and/or the USCG. Notification of the release through normal response communication networks satisfies the contact requirement in this rule.

Alternatively, if the locality is not part of an established communication network, the local government can contact the EPA Regional office or the NRC directly for purposes of satisfying this requirement. (Appendix I of today's rule identifies the EPA Regional office for each State and Territory and notes the NRC telephone numbers.) Contact must be made by telephone or radio as soon as possible, but not more than 24 hours after response initiation, to meet the Federal contact requirement for reimbursement.

##### C. Decision to Pursue Reimbursement

If the response has imposed significant financial burden on the community and appears to meet the basic requirements for reimbursement, as specified in § 310.30 of today's



interim final rule, the local government may choose to seek reimbursement and proceed to the next step.

#### D. Reimbursement Request

The local government should obtain a reimbursement application package by calling the RCRA/CERCLA Hotline at 1-800-424-9346 (toll free) or, in the Washington, DC, metropolitan area, at 382-3000. The package contains the forms and detailed instructions for preparing and submitting reimbursement requests. Application packages will be mailed to the locality upon request. The completed package must be returned to the U.S. Environmental Protection Agency, Emergency Response Division, Attn: Reimbursement Officer, WH-548B, 401 M Street SW, Washington, DC 20460, within six months of completion of the response. In the event that cost recovery efforts are still underway, the Agency will waive the application deadline if the application specifically states that the delay resulted from cost recovery efforts that ultimately were unsuccessful.

Only one request for reimbursement will be accepted for response to any single incident. When more than one local government (e.g., a city and county) has participated in such a response, those governments must determine which one of them will submit the application on behalf of them all. If more than one request is received for a single incident, all will be returned with appropriate written explanation and instructions for resubmitting a single, coordinated application.

#### E. Preliminary Screening

Initially, EPA will screen the request to make sure that it meets three preliminary screening criteria: (1) The request meets basic reimbursement criteria, as stated in today's rule; (2) it complies with the procedures for filing, as defined in this rule; and (3) it is complete. A request that does not meet the requirements for reimbursement stipulated in § 310.30 will be returned to the local government with a written explanation of why the application has been rejected.

An application that meets the basic criteria but that has not complied with the filing procedures specified in § 310.50 or that is incomplete will be returned to the local government with an explanation of its deficiencies. If the application has missed the filing deadline, it will be rejected, unless delay resulted from prolonged, but unsuccessful, cost recovery efforts. Other filing or completeness deficiencies

may be corrected and resubmitted to EPA within 60 days.

If all reimbursement criteria and filing requirements have been met, and the application is complete, EPA will notify the local government in writing that the request meets the preliminary screening criteria and will be considered for reimbursement. Such a notice in no way implies that reimbursement is assured. It means only that EPA will consider this request along with all other requests received during the review period that also have satisfied this initial screening.

#### F. Evaluation of Requests

Screened applications will be reviewed twice yearly, with each request assigned to a six-month review period based on the date a complete application is received. EPA will convene a review panel, comprising representatives from EPA Headquarters, EPA Regional offices and the USCG, for each review period. The review panel will make the final decision on reimbursement. In general, EPA intends to divide the funds appropriated each year for reimbursement evenly between the six-month periods. However, EPA may choose not to use all funds available during any period in which requests do not meet program requirements.

All requests for each six-month period will be evaluated on their own merits and with respect to the other requests under review. Because reimbursement monies are limited to 0.1 percent of the Superfund appropriation (which represents a maximum of \$8.5 million, or \$1.7 million for each year of the five-fiscal-year period beginning October 1, 1986) and because EPA expects that requests for reimbursement will exceed the funds available, the Agency will rank the requests and distribute the monies accordingly until available funds are disbursed.<sup>1</sup> The Agency will rank requests on the basis of significant financial burden incurred by the locality in performing the single response for which reimbursement is being sought.

The financial burden for the individual applicant is defined as the ratio of project cost to aggregate income and is computed as follows:

$$B = \frac{C}{Y \times P}$$

Where: B = burden on applicant  
C = eligible costs of response minus

<sup>1</sup> Because no reimbursement monies were disbursed during the fiscal year beginning October 1, 1986, EPA will prorate the total amount available for reimbursement over the remaining four years of the program.

reimbursement from responsible parties, States or other sources

Y = per capita annual income for the locality  
P = population of locality

The review panel will use U.S. Census Bureau "Local Population Estimates" Series P-26 in conjunction with response cost data supplied by the applicant to compute financial burden on the locality. Responses with higher costs proportionate to local aggregate income will be ranked higher than responses with proportionately lower costs.

In general, EPA expects that financial burden will be computed on the basis of the single response for which reimbursement is requested. In exceptional cases, however, the Agency may consider other financial data demonstrating financial hardship incurred by the community in responding to hazardous substance threats. For example, a small community with limited resources that has had to respond to numerous hazardous substance emergencies over a short period of time may choose to supply additional information demonstrating the cost impacts of those multiple responses. As another example, a community in a declared disaster area may want to supply economic impact data associated with the disaster along with the financial information for the hazardous substance response.

Any requests not reimbursed during the six-month period in which they are first considered remain open for later consideration, at the review panel's discretion, for one year (two additional review periods) after the initial review period. EPA will notify the applicant if the request is carried over to the next period. After that time, an unreimbursed request will no longer be considered and the applicant will be notified that the request will not be reimbursed.

#### VI. Section-by-Section Analysis

##### A. Subpart A—General

Subpart A discusses the purpose, scope and applicability of the local government reimbursement interim final rule. It also provides definitions necessary for the proper interpretation and implementation of the rule and outlines penalties applicable to false statements or claims made as part of an application for reimbursement under section 123 of CERCLA.

##### 1. Section 310.05 Purpose, Scope and Applicability

As stated in § 310.35, the purpose of this rule is to alleviate significant financial burden imposed on a local government as a result of conducting



temporary emergency measures to prevent or mitigate injury to human health or the environment, as authorized under section 123 of CERCLA. This purpose is consistent with the statutory requirement that reimbursement not supplant funds normally provided for response. Today's rule only applies to local governments (e.g., a county, parish, city, municipality, township, Federally-recognized Indian tribe or other general purpose unit of local government). States are not eligible for this program.

In keeping with the statutory limits on this use of the Superfund set forth in section 111 and section 123 of CERCLA, § 310.05(c) of today's rule limits the maximum possible reimbursement award to \$25,000 per single response and restricts the amount of money available to the overall reimbursement program to 0.1 percent of the total amount appropriated from the Superfund. Due to the limited amount of money authorized for reimbursement, some requests for reimbursement may not ever be paid even though they meet all the requirements of today's rule.

## 2. Section 310.10 Abbreviations and section 310.11 Definitions

Section 310.10 explains the acronyms referenced in this rule. Section 310.11 defines key terms used in the rule. In an effort to be consistent with the requirements and objectives of the overall Superfund program, most of the definitions contained in § 310.11 of today's interim final rule are taken from CERCLA and the NCP either verbatim or with minor wording changes. EPA developed the definitions of "General Purpose Unit of Local Government," "Single Response" and "Date of Completion" specifically for this rule.

## 3. Section 310.12 Penalties

Section 310.12 imposes penalties for any person who knowingly gives or causes to be given any false statement or claim as part of any application for reimbursement under section 123 of CERCLA. EPA has included these penalties, under the authority of the False Statement Act, 18 U.S.C. 1001, and False Claims Act, 31 U.S.C. 3729, to prevent fraudulent or abusive use of the Fund. Failure to abide by the requirements found in these two laws when filing a reimbursement application may result in fines or imprisonment.

### B. Subpart B—Reimbursement

Subpart B of this interim final rule establishes conditions that must be met for reimbursement under CERCLA 123. Three types of conditions are set forth: eligibility of the applicant to receive reimbursement, requirements for

reimbursement and allowable and unallowable costs. These conditions are included to ensure that (1) The intent of Congress is carried out in reimbursing local governments; (2) reimbursement is consistent with, and complementary to, the rest of the Superfund program; and (3) expenditures from the Superfund are warranted and appropriate.

## 1. Section 310.20 Eligibility for Reimbursement

Section 310.20 of the interim final rule specifies who is eligible for reimbursement. This section limits eligibility for reimbursement to general purpose units of local government. These may include cities, counties, municipalities, parishes, townships, Federally-recognized Indian tribes or other official political subdivisions designated by a particular State. This restriction is consistent with section 123(a) of CERCLA, which limits applicability to "(a)ny general purpose unit of local government for a political subdivision which is affected by a release or threatened release. . . ."

Section 123 of CERCLA specifically designates local governments as recipients of reimbursement monies and does not indicate that this provision applies in any way to States. Therefore, State governments are not eligible for reimbursement under § 310.20(b). States also are precluded from requesting reimbursement on behalf of political subdivisions within the State. This restriction is designed to avoid any question of eligibility when reimbursement requests are reviewed by EPA.

## 2. Section 310.30 Requirements for Requesting Reimbursement

The purpose of § 310.30 is to ensure consistency with the requirements, policies and practices of the Superfund program, to lend support to related initiatives and to encourage the use of established procedures in conducting responses. EPA has established requirements to ensure an equitable distribution of funds to the most deserving applicants.

### a. Effective Date for Response

Section 310.30(a) restricts reimbursement to responses initiated on or after the effective date of this interim final rule. Although section 123(b)(1) of CERCLA authorizes reimbursement for expenses incurred before or after the enactment of SARA, EPA believes that eligibility can be reduced to a shorter period in accordance with the procedures promulgated by EPA under section 123(d). It is EPA's view that prospective reimbursement will permit a

more equitable distribution of the funds, since all potential applicants will be considered in the same timeframe and according to the same criteria. These criteria are established in today's interim final rule. In order to qualify for reimbursement a local government must meet the requirements of CERCLA, the NCP, and the Community Right-to-Know Act, and, in addition, contact the Federal government within 24 hours after response initiation to ensure that these requirements are understood and can be met. This notice requirement is discussed in greater detail in subsection 2(b) of this preamble.

The Agency decided not to allow reimbursement for actions taken before the effective date of this rule for several reasons. Such reimbursement would require the Agency either to waive the criteria or apply them retroactively. However, waiving the criteria for past responses or attempting to apply them retroactively could result in inconsistent and potentially unfair implementation of this program. A prospective approach better ensures that Federal funds are used to support safe and effective responses, since the Federal government will be able to assess local capabilities for dealing with the release and to provide technical assistance if necessary. Waiving these criteria for past responses could result in reimbursement for responses that do not meet established Superfund standards, or are inadequately documented or were ineffective, thereby reducing the pool of funds available for responses that are fully compliant. Conversely, applying these criteria retroactively could give a significant advantage to larger communities with more sophisticated response and recordkeeping capabilities, and, as a general rule, greater financial resources. Thus, these communities could receive reimbursement at the expense of communities with less developed capabilities, but possibly greater financial need.

EPA is aware that limiting reimbursement to responses occurring after promulgation of this rule will preclude reimbursement of some otherwise valid and deserving requests. However, the Agency believes that the mission of the Superfund program, and specifically the local government reimbursement program, is best served if all requests are subject to the same requirements, thereby helping to ensure that the limited reimbursement funds are used for safe and effective response. The Agency specifically requests comment on this issue.



#### b. Federal Contact Requirement

Section 310.30(b) requires the local government to contact EPA or the National Response Center as a condition of reimbursement. Contact for purposes of reimbursement is to be made as soon as possible, but not more than 24 hours after response initiation, unless EPA or the USCG has been informed of the response through a release notification to the National Response Center or other established response communication channels.

Because EPA seeks to ensure safe and appropriate responses and appropriate use of the Fund, the Agency believes that it is appropriate for EPA or the USCG to be aware of a response for which a local government seeks reimbursement. Timely contact is useful in several respects. First, it can help EPA or the USCG assess local response capabilities relative to this response, ascertain the effectiveness of local actions and determine whether Federal technical assistance or action is appropriate or necessary. Second, it allows EPA or the USCG to make sure the local responder understands EPA criteria and requirements, such as compliance with the NCP. Finally, it provides an opportunity to determine whether a response might be a candidate for reimbursement. This can prevent a locality from preparing an application for a response that is not eligible for reimbursement (e.g., an oil spill).

EPA had considered a 72-hour contact requirement, but reasoned that, if the incident exceeded local response capabilities, then the Federal Government needed to be notified of that in order to lend technical assistance, and 72 hours after the fact could be too late. Local representatives at all five regional meetings supported the longer timeframe and expressed concern that a 24-hour requirement might divert local officials from the response action itself. EPA believes that the need for timely information and prompt assistance, if required, outweighs the risk posed by the brief diversion of effort to make the contact.

Initially EPA considered two other approaches. The first approach was certification of the capabilities and credentials of a potential respondent on a one-time basis, in advance of any response action. This approach was rejected because it would be impractical to attempt to certify all local governments for reimbursement owing to their sheer number (more than 50,000 as of 1982). Although certification could be attempted on an as-requested basis, the effort and cost could be wasted

because hazardous substance release incidents are unpredictable and a certified local agency may never be called on to perform temporary emergency measures. Moreover, certification may not take into account the specific technical requirements of an individual incident.

Preauthorization to carry out temporary emergency measures specific to a particular incident was the second approach considered. Preauthorization would entail obtaining EPA's prior approval before carrying out response activities for which the local government later requests reimbursement. Although preauthorization would enable EPA to ensure appropriate use of the Fund, it appears impractical because of the timeframe involved. Moreover, the statutory language suggests that Congress envisioned reimbursement for response actions that cannot wait for advance approval ("measures which require immediate response") and cites responses to fires and explosions as examples. For these reasons, EPA decided preauthorization is not appropriate for reimbursement under this program.

Several localities suggested limiting reimbursement to responses reported to EPA or the USCG through normal response communication channels, in lieu of a separate contact for reimbursement. In general, localities favoring this approach had well-established and mandatory communication procedures for emergency situations. The approach included in today's interim final rule brings in localities that may not be part of an established communication network. For those localities already in an active network, this requirement would not create a new reporting burden and could enhance the effectiveness of the existing response communication channel.

#### c. Consistency Requirement

Section 310.30(c) of this interim final rule stipulates that response actions for which reimbursement is sought must be consistent with CERCLA, the NCP, and, if applicable, the local emergency response plan required under section 303(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (or Title III of SARA). Clearly, responses must comply with the provisions of CERCLA even to be eligible for this use of the Fund. In addition, section 104(a)(1) of CERCLA calls for "response measure(s) consistent with the National Contingency Plan. . . ."

The NCP provides for efficient, coordinated and effective responses to actual or threatened releases of

hazardous substances or pollutants or contaminants. Local governments should consult the NCP for specific procedures to follow in conducting temporary emergency measures to satisfy this consistency requirement. The NCP also specifies the division of responsibility among the Federal, State and local governments during response actions and appropriate roles for private entities (NCP §§ 300.21 through 300.25). Because the NCP stipulates the basic requirements for CERCLA-funded responses, a response for which reimbursement is requested must conform to the Plan. Likewise, because the Title III emergency response plan spells out methods and procedures for responders that are specific to that community, EPA expects local agencies to comply with that plan.

#### d. Restriction on Supplanting Local Funds

Section 310.30(d) specifies that reimbursement monies may not supplant nonfederal funds normally provided for emergency response programs. As required by section 123(b)(2) of CERCLA, local governments may be reimbursed for the costs of temporary emergency measures only if reimbursement would supplement, not supplant, nonfederal (State and local) funds that would otherwise be made available. Compliance with this requirement entails certification and demonstration that reimbursement does not supplant local funds normally provided for response. (This certification is stipulated in § 310.50(c)(3) of today's rule). In addition, EPA may request reimbursement applicants to submit line-item budgets for the fiscal year in which the incident for which reimbursement is requested occurred as well as response cost information. Since only limited funds are available for this program, EPA expects that the possibility of being reimbursed will not provide adequate incentive for local governments to intentionally decrease nonfederal funding for response programs.

#### e. Attempt to Recover Costs

Section 310.30(e) of this rule requires applicants to seek other funding sources before requesting reimbursement from the Fund. Local governments must make a good faith effort to recover costs from potentially responsible parties (PRPs). Because of the time that cost recovery efforts can entail, EPA will waive the six-month application deadline for requesting reimbursement in those cases where cost recovery is pursued. Thus, local governments should take the time



they need to complete cost recovery action before applying for reimbursement for unrecovered costs.

EPA recognizes that PRP searches can become extensive and costly and, therefore, the Agency will be satisfied with evidence of a reasonable attempt at recovering costs. Such evidence might include, for example, copies of return-receipt letters requesting payment, with certification that payment has not been received, or copies of letters from PRPs stating refusal to pay or sworn statements from local officials that no PRP has been or can be identified.

The evidence of attempt to recover costs must indicate that, where a PRP could be identified, the PRP was given at least 60 days to satisfy the demand for cost recovery. Copies of return-receipt letters or sworn statements may suffice for this purpose. Where no PRP can be identified, the locality must certify that none can be found. (This certification is stipulated in § 310.50 of today's rule.)

This section also requires that local authorities pursue all other sources of funds, such as insurance or State reimbursement monies, before seeking reimbursement from the Superfund under section 123 of CERCLA. This provision has been included to ensure that the limited funds available to this program are used only when no other source can be found and to prevent multiple reimbursements for one response.

In developing today's rule, EPA considered the option of having no cost recovery requirement. This alternative was rejected for several reasons. First, one of EPA's primary goals in implementing the Superfund program is to compel those responsible for a release to conduct or finance cleanup of that release or to recover costs from the responsible party if EPA has conducted a response action using Fund monies. The reimbursement program must be consistent with this overall program goal. Second, local officials who participated in the regional meetings expressed concern that lack of such a requirement would give PRPs a loophole for escaping their responsibility to pay and take away the leverage that localities need to recover costs wherever possible. Finally, failure to include such a requirement could add unnecessarily to the drain on the Fund, taking away money needed for responses where no PRP truly could be found or made to pay.

#### f. Emergency Planning

Section 310.30(f) of this rule requires that, after October 17, 1988, the applicant's jurisdiction be included in the comprehensive emergency response

plan completed by the local emergency planning committee, as stipulated by section 303(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (or Title III of SARA). Because establishment of a local emergency planning committee is the responsibility of the State government, EPA will waive this requirement for localities where the State emergency response commission has not yet established a committee responsible for the geographic area in which the applicant is located.

EPA believes this requirement is appropriate for the reimbursement program because this emergency planning provisions required under title III are designed to encourage the development of coordinated local response capabilities and they address the emergency response actions for which local governments may decide to seek reimbursement. Furthermore, the Agency wishes to encourage local governments to participate in local emergency planning committees and in the development of emergency plans consistent with the intent of Title III and believes that linking this requirement to reimbursement will offer added incentive to local communities to do so.

EPA received comments from officials at the five regional meetings as to their views on including a link between reimbursement and Title III. The majority favored including participation in local emergency planning as a condition of reimbursement because they believe it will encourage local planning. Community officials did express reservations about their dependency on the State government to establish local emergency planning committees and the waiver provision included in § 310.30(f) is designed to address that concern.

#### 3. Section 310.40 Allowable and Unallowable Costs

To be allowable for reimbursement, all costs for temporary emergency measures for which reimbursement is being sought must be consistent with section 111 of CERCLA ("Uses of Fund") and with the Federal cost principles outlined in the Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State and Local Governments." These standard requirements apply to all Superfund programs involving State and/or local governments where monies from the Trust Fund are spent.

CERCLA section 111(c)(11) explicitly authorizes reimbursement to local governments for temporary emergency measures as an allowable use of the Superfund. OMB Circular A-87

establishes principles and standards for determining costs that are applicable to grants, contracts and other agreements with State and local governments. EPA has determined that the principles and standards set forth in Circular A-87 apply to reimbursement under section 123 of CERCLA, and in addition has identified a set of allowable and unallowable costs that are specific to the reimbursement program. Section 310.40 of today's rule outlines this set of allowable and unallowable costs.

EPA's objective in identifying allowable and unallowable costs specific to the reimbursement program is to provide guidance to potential applicants on the types of costs EPA will consider for reimbursement and to ensure that reimbursement does not supplant local funds normally provided for response. EPA used section 111 of CERCLA and OMB Circular A-87 as a basis for deciding what costs are reimbursable.

In making its cost determinations, EPA also considered the types of temporary emergency measures typically undertaken during a response, with special consideration given to the limited funds available for the reimbursement program relative to the number of potential applicants. A particular issue the Agency addressed was replacement of equipment, because the potential for abuse is significant and because reimbursement monies are limited. EPA determined, however, that there are potential response situations where such costs should be considered for reimbursement. For example, the loss of breathing apparatus and hoses due to irreversible contamination and contamination of other essential response equipment represents a considerable loss to local governments. EPA has decided to allow replacement costs for equipment contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the response for which reimbursement is being sought. It should be noted that since the maximum reimbursement amount is limited to \$25,000, it is likely that large-scale equipment replacement will not be reimbursed in full. (Purchase and routine maintenance of equipment for response, however, are not allowable costs. EPA views these as costs for which local funds are normally provided.)

Costs associated with the services, supplies and equipment procured for a specific evacuation also have been included as allowable costs. EPA considers evacuation to be a temporary emergency measure and evacuation



costs incurred that exceed services and costs normally provided by the local government may be eligible for reimbursement.

EPA has determined that disposable materials and supplies already owned by a local government, but consumed during response, constitute items normally provided for response by the local governments and therefore are not allowable costs for purposes of the reimbursement program. EPA has decided not to include medical expenses as an allowable cost because reimbursement for such costs normally should be covered by insurance or Workmen's Compensation.

In addition, EPA has determined that certain other costs are unallowable for purposes of the reimbursement program. These include employee fringe benefits, administrative costs for filing reimbursement applications, employee out-of-pocket expenses normally provided for in the applicant's operating budget and legal expenses that may be incurred as a result of response activities. EPA has determined that fringe benefits, certain employee out-of-pocket expenses, and legal expenses are costs normally provided for in a local government's operating budget. In addition, EPA considers administrative costs associated with filing a request for reimbursement not allowable, since it is the responsibility of the local government to determine whether or not to pursue reimbursement under this program.

#### *C. Subpart C—Procedures for Filing and Processing Reimbursement Requests*

Subpart C establishes the procedures for preparing the processing reimbursement applications. The purpose of defining these procedures is to give applicants a clear understanding of what information EPA needs in considering an application, to provide a consistent basis on which to evaluate reimbursement requests and to improve processing efficiency by making all forms and procedures standard.

##### *1. Section 310.50 Filing Procedures*

Section 310.50(a) of today's rule limits local governments to filing only one request for reimbursement for a given response to a release even though multiple agencies (and possibly jurisdictions) may have participated. This requirement is needed to ensure that the statutory maximum of \$25,000 per single response is not exceeded and that payments are not duplicated. EPA expects that local officials will work together to determine total response costs, the relative share borne by each local agency and the appropriate agency

or official who will assume responsibility for preparing the application.

Under § 310.50(b) of this rule, applicants must use the standard application form illustrated in Appendix II of the rule for filing their requests for reimbursement. EPA has decided to use a standard form because it reduces confusion about what information is to be supplied, helps ensure that all applicants are evaluated on the basis of comparable information and enables reviewers to check applications for completeness and consistency quickly. The form requests five basic pieces of information: (1) Identification of the local government requesting reimbursement; (2) information about the incident; (3) information about the response, including the specific temporary emergency measures for which reimbursement is being sought; (4) cost data; and (5) certifications and signature of an authorized representative of the local government. Detailed instructions for completing the form and examples will be included in the application package provided by EPA to potential requesters.

Section 310.50(b)(1) further requires that the applicant demonstrate that costs were incurred for temporary emergency measures necessary to protect human health and the environment. As discussed previously, the Agency has not attempted to explicitly define "temporary emergency measures," owing to the unpredictability and variability of hazardous substance releases, but actions that may qualify include security, source control, release containment, control of contaminated runoff and similar steps to protect people and the environment from imminent threats. The application form includes a section for explaining exactly what temporary emergency measures were taken and why they were necessary. For example, an acceptable demonstration might be: "Erected berms to prevent migration of pesticides leaking from ruptured drums into Fast River, the drinking water source for the City of Middletown." By contrast, an assertion along the lines of "source control needed to protect human health" would not constitute an acceptable demonstration.

Cost must be identified with specific actions, as indicated in Table 1 of the application form. The applicant should briefly state the specific temporary emergency measure for which reimbursement is being sought and indicate which local agency (e.g., fire department, sheriff's office) incurred the cost for performing this measure. Each cost element for performing this

measure should be specified in detail (e.g., overtime, decontamination services, equipment rental) and matched to the specific amount expended. Estimated amounts will not be considered for reimbursement.

Section 310.50(b)(2) requires the applicant to demonstrate that a reasonable effort has been made to obtain reimbursement from sources other than the Superfund. This filing requirement is intended to document the effort to recover costs, as stipulated in § 310.30(e) of today's rule. Acceptable demonstrations that cost recovery has been attempted include copies of letters from potentially responsible parties (PRPs) stating their inability or refusal to pay or copies of dated letters (with return-receipt requested) from the local government to the PRP requesting payment, with a statement certifying that the PRP has failed to respond to such letters within at least 60 days. Sworn statements attesting to the fact that no PRP could be found or that insurance monies or State funds are not available to cover the costs for these temporary emergency measures also will suffice.

Section 310.50(c) requires the applicant to certify that costs were incurred specifically for this response and are accurate, that the contact requirement in § 310.30(b) was met, that this reimbursement does not supplant local funds normally required for response and that no PRP be identified. The applicant also must certify that if the local government later recovers costs from responsible parties, States or insurance after those costs have been reimbursed from the Superfund, that local government is required to return the reimbursement monies to the Fund in the amount of the recovery. This requirement is consistent with the intent of CERCLA that the Superfund be used only when no other source of funds is available and eliminates the possibility of duplicate payment for the same costs. All four certification requirements are necessary to ensure that the Superfund is used appropriately and that the provisions of Section 123(b)(2) of CERCLA are met.

Section 310.50(d) stipulates that the local government's request for reimbursement must be received by EPA within six months of the date of completion of the response unless cost recovery efforts are underway. For purposes of this rule, "date of completion" is defined as the date when all field work has been completed and all project deliverables have been received by the local government. EPA is imposing this requirement for several



reasons. First, the Agency may have questions about the application or need more information and it should be easier to answer them sooner, rather than later. Second, EPA believes that the time requirement will help smooth the number of applications to be processed in any one year and prevent a sudden increase in the rate of application as the funding expiration date approaches.

Section 310.50(e) stipulates that the application be signed by the chief executive officer of the local government or his or her delegate. This requirement protects the local government from unauthorized or improper attempts to obtain reimbursement that might later preclude a legitimate request. It also provides EPA with assurance that the request is legitimate, and thus an appropriate use of the Superfund, and can be considered for reimbursement.

#### *2. Section 310.60 Verification and Reimbursement*

Section 310.60 specifies the verification and reimbursement procedures EPA will follow in evaluating and processing requests for reimbursement. The verification procedures are intended to ensure that all requests are complete and adequately documented. Thus, § 310.60(a) allows EPA to return an incomplete request to the applicant with written notice of the deficiencies and § 310.60(b) gives the applicant 60 days in which to respond. Under § 310.60(c), EPA will notify the applicant when the Agency has determined that the request meets all requirements for reimbursement and complies with all filing procedures. At that point, the request is considered complete and can be reviewed by the evaluation panel. Under § 310.60(d), if documentation is not adequate to demonstrate the reasonableness of the costs claimed, EPA can make adjustments accordingly, including asking for additional information.

Reimbursement procedures are specified in § 310.60(e), (f) and (g). Upon reviewing a completed request, EPA will compute the financial burden borne by the community in conducting the response and rank the request relative to the financial burden associated with other requests. Financial burden will be computed as  $B = C / (Y \times P)$ , where B = financial burden on applicant; C = eligible costs of response minus reimbursement from responsible parties, States or other sources; Y = per capita annual income for the locality; and P = population of the locality. Depending upon the ranking of the request and the funds available for reimbursement, EPA will either reimburse the request, deny

it, or hold it for consideration during a later period. Section 310.60(f) limits EPA to reimbursing local governments (1) only for costs that are allowable, reasonable and necessary and (2) only to the extent that the temporary emergency measures conformed to the hazardous substance response criteria set forth in CERCLA, the NCP and the local emergency response plan. EPA will notify the applicant of the Agency's decision in writing.

#### *3. Section 310.70 Records Retention*

This section stipulates that an applicant receiving a reimbursement must maintain cost documentation and other relevant records, and must provide EPA access to these materials, for six years from the date of reimbursement. This requirement ensures the availability of pertinent information if EPA pursues cost recovery for this response. Once the six years has expired, the applicant must notify EPA of any intention to destroy these records. If EPA chooses not to take possession of them, the local authority may dispose of the materials. The requirements of this section do not apply to requests that have been denied and are not being disputed under § 310.90.

#### *4. Section 310.80 Payment of Approved Reimbursement Requests*

This section stipulates that reimbursement payments can be made only when an appropriation in the Superfund is available and that payments will be in the order in which approved requests are ranked, according to financial burden on the applicant. This provision is consistent with section 111(e)(1) of CERCLA, which restricts payment of claims against the Superfund "in excess of the total money in the Fund. . . ."

#### *5. Section 310.90 Disputes Resolution*

This section specifies EPA's procedures for reviews of denial of reimbursement and reviews of amount of reimbursement, either of which the requester may choose to dispute. The applicant has 60 days from the date of the reimbursement decision to request a review, otherwise that decision constitutes a final Agency action. The request for review includes a discussion of the issue involved and a statement of the applicant's objection. After filing for review, the applicant is entitled to an informal conference with the EPA disputes decision official. The requester may be represented by counsel and submit evidence for inclusion in a written record. The Agency will provide the requester with a written decision

specifying the outcome of the review. This decision constitutes final EPA action on the matter.

### **VII. Regulatory Analyses**

#### *A. Executive Order No. 12291*

Under Executive Order No. 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of \$100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity and innovation and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This regulation involves reimbursement of the costs of local governments for responding to a hazardous substance release. This is a benefit authorized by CERCLA, and does not adversely affect the private sector economy or small entities, which may include local governments, and in fact provides a benefit to local governments in the form of reimbursement to offset financial hardship incurred from responses to hazardous substances and pollutants or contaminants. EPA, therefore, certifies that this regulation will not have a significant impact on a substantial number of small entities.

#### *C. Paperwork Reduction Act*

The reporting or recordkeeping requirements in this interim final rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.



**VIII. List of Subjects in 40 CFR Part 310**

Administrative practice and procedure, Hazardous substances, Incorporation by reference, Intergovernmental relations, Local governments, Reporting and recordkeeping requirements, Superfund.

Lee M. Thomas,

Administrator.

October 16, 1987.

Title 40 of the Code of Federal Regulations is amended by adding the following new Part 310:

**PART 310—REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES**

**Subpart A—General**

Sec.

310.05 Purpose, scope and applicability.

310.10 Abbreviations.

310.11 Definitions.

310.12 Penalties.

**Subpart B—Reimbursement**

310.20 Eligibility for reimbursement.

310.30 Requirements for requesting reimbursement.

310.40 Allowable and unallowable costs.

**Subpart C—Procedures for Filing and Processing Reimbursement Requests**

310.50 Filing procedures.

310.60 Verification and reimbursement.

310.70 Records retention.

310.80 Payment of approved reimbursement requests.

310.90 Disputes resolution.

Appendix I—EPA Regions and NRC Telephone Lines.

Appendix II—Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123

Authority: 42 U.S.C. 9611(c)(11), 9623.

**Subpart A—General**

**§ 310.05 Purpose, scope and applicability.**

(a) Through this regulation, the Environmental Protection Agency is establishing the procedures for reimbursing local governments for temporary emergency measures to prevent or mitigate injury to human health or the environment, as authorized under section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). This program is intended to alleviate significant financial burden on local governments for response to releases or threatened releases of hazardous substances or pollutants or contaminants and will not supplant local funds normally provided for

response. Reimbursement does not apply to expenditures incurred in the course of providing what are traditionally local services and responsibilities, such as routine firefighting.

(b) Applications for reimbursement for temporary emergency measures may be submitted only through the procedures established in this regulation. Any general purpose unit of local government for a political subdivision may request reimbursement. States are not eligible for this program. Under this regulation, local governments may apply for reimbursement for temporary emergency measures performed subsequent to promulgation of this rule. Reimbursement may be made for temporary emergency measures conducted during either Federal-lead or non-Federal-lead responses.

(c) Reimbursement to local governments for temporary emergency measures may not exceed \$25,000 per single response, nor may reimbursement supplant local funds normally provided for response. Because CERCLA specifies that no more than 0.1% of the amount appropriated from the Hazardous Substance Superfund may be allocated to the reimbursement program for the five fiscal years beginning October 1, 1986, some requests may not ever be reimbursed even though they meet all requirements of this regulation.

**§ 310.10 Abbreviations.**

CERCLA—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), 42 U.S.C. 9601-75, as amended by the Superfund Amendments and Reauthorization Act of 1986, also known as Superfund

EPA or the Agency—Environmental Protection Agency

NCP—National Contingency Plan

OMB—Office of Management and

Budget

SARA—The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499)

USCG—U.S. Coast Guard

**§ 310.11 Definitions.**

For purposes of this rule except when otherwise specified:

(a) "Date of completion" means the date when all field work has been completed and all deliverables (e.g., lab results, technical expert reports) have been received by the local government.

(b) "Emergency Planning and Community Right-To-Know Act of 1986" means Title III—Emergency Planning and Community Right-To-Know of the Superfund Amendments and Reauthorization Act of 1986.

(c) "General purpose unit of local government" means the governing body of a county, parish, municipality, city, town, township, Federally-recognized Indian tribe or similar governing body.

(d) "Hazardous substance," as defined by section 101(14) of CERCLA, means:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act.

(2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA.

(3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress).

(4) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act.

(5) Any hazardous air pollutant listed under section 112 of the Clean Air Act, and

(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under paragraphs (d)(1) through (d)(6) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures or natural gas and such synthetic gas).

(e) "Local comprehensive emergency response plan" means the emergency plan prepared by the local emergency planning committee as required by section 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (SARA Title III).

(f) "National Contingency Plan" means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300).

(g) "National Response Center" means the national communications center located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate Federal officials.

(h) "Pollutant or contaminant," as defined by section 104(a)(2) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation



into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(i) "Release," as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes: any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For the purpose of this regulation, release also means substantial threat of release.

(j) "Single response" means all of the concerted activities conducted in response to a single episode, incident or threat causing or contributing to a release or threatened release of hazardous substances or pollutants or contaminants.

#### § 310.12 Penalties.

Any person who knowingly gives or causes to be given any false statement or claim as part of any application for reimbursement under section 123 of CERCLA, upon conviction, may be fined or imprisoned subject to the False Statement Act (18 U.S.C. 1001) and the False Claims Act (31 U.S.C. 3729).

### Subpart B—Reimbursement

#### § 310.20 Eligibility for reimbursement.

(a) Any general purpose unit of local government may request reimbursement for temporary emergency measures if all requirements under § 310.30 of this rule are met.

(b) States are not eligible for reimbursement for temporary emergency measures and no State may request reimbursement on its own behalf or on the behalf of political subdivisions within the State.

#### § 310.30 Requirements for requesting reimbursement.

(a) Response must have been initiated on or after the effective date of this rule.

(b) The local government must inform EPA or the National Response Center (NRC) of the response as soon as possible, but not later than 24 hours after the start of response, unless EPA or the USCG has been contacted via the NRC or other established response communication channel. EPA Regional offices and NRC telephone numbers are designated in Appendix I to this rule.

(c) Requests for reimbursement must demonstrate that response actions are not inconsistent with CERCLA, the NCP and, where applicable, the local comprehensive emergency response plan completed under the Emergency Planning and Community Right-to-Know Act of 1986.

(d) Requests for reimbursement must provide assurance that reimbursement for costs incurred for temporary emergency measures does not supplant local funds normally provided for response.

(e) Applicants for reimbursement must first present requests for payment of incurred costs to all known potentially responsible parties and permit at least 60 days for payment or for expression of intent to pay or willingness to negotiate prior to submitting a reimbursement request to the Agency. Local governments also must pursue all other sources of reimbursement (e.g., insurance, reimbursement from the State) before seeking reimbursement from EPA under this rule.

(f) After October 17, 1988, the applicant's jurisdiction must be included in the comprehensive emergency response plan completed by the local emergency planning committee as required by section 303(a) of the Emergency Planning and Community Right-to-Know Act of 1986. This requirement does not apply if the State Emergency Response Commission (SERC) has not established a local emergency planning committee(s) responsible for the emergency planning

district(s) encompassing the applicant's geographic boundaries.

#### § 310.40 Allowable and unallowable costs.

To be allowable, costs for which reimbursement is sought must be consistent with CERCLA and with Federal cost principles outlined in the OMB Circular A-87, "Cost Principles for State and Local Governments." The local government may also seek assistance from the EPA Regional Office in determining which costs may be allowable. Final determination of the reasonableness of the costs for which reimbursement is sought will be made by EPA.

(a) In general, allowable costs are those project costs that are eligible, reasonable, necessary and allocable to the project. Costs allowable for reimbursement may include, but are not limited to:

(1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response for which reimbursement is being requested (hereafter referred to as "the response")

(2) Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget (e.g., overtime pay for permanent full-time and other than full-time employees)

(3) Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment) (Note: reimbursement for these costs will not exceed the duration of the response)

(4) Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the response (e.g., self-contained breathing apparatus irretrievably contaminated during the response)

(5) Decontamination of equipment contaminated during the response

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts/specialists not otherwise provided for by the local government)

(7) Other special services specifically required for the response (e.g., utilities)

(8) Laboratory costs for purposes of analyzing samples taken during the response



(9) Costs associated with the services, supplies and equipment procured for a specific evacuation.

(b) In general, costs unallowable for reimbursement include, but are not limited to:

(1) Purchase or routine maintenance of equipment of a durable nature that is expected to have a period of service of one year or more after being put into use without material impairment of its physical condition, except as provided in (a)(4) and (a)(5) of this section

(2) Materials and supplies not purchased specifically for the response

(3) Employee fringe benefits

(4) Administrative costs for filing reimbursement applications

(5) Employee out-of-pocket expenses normally provided for in the applicant's operating budget (e.g., meals, fuel)

(6) Legal expenses that may be incurred as a result of response activities, including efforts to recover costs from potentially responsible parties

(7) Medical expenses incurred as a result of response activities.

(c) The local government must ensure that costs incurred are substantiated and that cost documentation is adequate for an Agency audit. Documentation of response costs must include at a minimum:

(1) Specification of the temporary emergency measures for which reimbursement is requested

(2) Specification of the local agency incurring the cost

(3) Detailed breakdown of actual costs, by cost element such as overtime, equipment rental

(4) Supporting documents such as invoices, sales receipts, rental or leasing agreements

(5) Generally accepted accounting practices consistently applied.

#### Subpart C—Procedures for Filing and Processing Reimbursement Requests

##### § 310.50 Filing procedures.

(a) Only one request for reimbursement will be accepted for each hazardous substance emergency requiring immediate response at the local level. When more than one local agency has participated in such a response, those agencies must determine which single agency will submit the request on behalf of them all.

(b) A request for reimbursement must be submitted on EPA form 9310-1, illustrated in Appendix II, and must demonstrate that:

(1) Costs for which reimbursement is sought were incurred for temporary emergency measures taken by the local government to protect human health and

the environment from releases or threatened releases of hazardous substances, pollutants or contaminants; temporary emergency measures may include security, source control, release containment, neutralization or other treatment methods, contaminated runoff control and similar activities mitigating immediate threats to human health and the environment

(2) Reasonable effort has been made to recover costs from the responsible party and from any other available source and that such effort has been unsuccessful

(3) Response actions were not inconsistent with CERCLA, the NCP and, if applicable, the local emergency response plan required under Title III of SARA

(c) Applicants must certify that:

(1) All costs are accurate and were incurred specifically for the response for which reimbursement is being requested

(2) The local government complied with the requirement to inform EPA or the USCG of the response, as specified in § 310.30(b)

(3) Reimbursement for costs incurred for response activities does not supplant local funds normally provided for response.

(4) If costs subsequently are recovered from responsible parties or other sources after the local government has received reimbursement from the Superfund, the local government agrees to return to EPA the reimbursement monies for which costs have been recovered.

(d) Reimbursement requests must be received by EPA within six months of the date of completion of the response for which reimbursement is being requested unless a cost recovery action is pending, in which case EPA will waive the deadline.

(e) A request for reimbursement must be signed by the chief executive officer of the local government or his or her delegate.

##### § 310.60 Verification and reimbursement.

(a) Upon receipt of a reimbursement request, EPA will verify that it complies with all requirements. Where the request is incomplete or has significant defects, EPA will return the request to the applicant with written notification of its deficiencies.

(b) A request returned to the applicant for correction of deficiencies must be resubmitted to EPA within 60 days.

(c) For purposes of this regulation, a reimbursement request is deemed complete when EPA determines that the request complies fully with all requirements for reimbursement and with all filing procedures. When the

request is complete, a notice will be provided to the applicant of EPA's receipt and acceptance for evaluation.

(d) If EPA determines that it cannot complete its evaluation of a request because the records, documents and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate the reasonableness of the costs claimed, EPA may reject the request or make adjustments, if possible. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 60 days unless specifically extended by EPA. The failure of the applicant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the reimbursement request.

(e) When the reimbursement request is completed, EPA will rank the request on the basis of financial burden. Financial burden will be based on the ratio of eligible response costs to the applicant locality's per capita income adjusted for population. Per capita income and population statistics used to calculate financial burden shall be those published by the U.S. Department of Commerce, Bureau of the Census, in Current Population Reports, Local Population Estimates, Series P-26, "1984 Population and 1983 Per Capita Income Estimates for Counties and Incorporated Places," Vols. 84-S-SC, 84-MW-SC, 84-NE-SC, 84-W-SC, 84-WNC-SC, June 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies are available from the Bureau of the Census, Office of Public Affairs, Department of Commerce, Constitution Avenue, NE., Washington, DC 20230 (1-202-763-4040). Copies may be inspected at the U.S. Environmental Protection Agency, 401 M Street, SW., Room LG-100, Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC. In ranking requests on the basis of financial burden, EPA also will give consideration to other relevant financial information supplied by the applicant. Once the request is ranked, EPA will:

(1) Reimburse the request or

(2) Decline to reimburse the request or

(3) Hold the request for consideration in a subsequent period.

(f) Reimbursement will be made:

(1) Only for costs that are allowable, reasonable and necessary.



(2) Only to the extent that the temporary emergency measures conformed to response criteria established by CERCLA, the NCP and the local emergency response plan, if applicable.

(g) The EPA reimbursement official will provide the requester with a written final decision. Payment of approved requests will be made according to § 310.80 of this regulation.

(h) Requests that are not reimbursed during the review period in which they are first considered remain open for consideration, at the EPA reimbursement official's discretion, for one year. EPA will notify the requester in writing if the request is held for later review. After that time, an unreimbursed request will no longer be considered and EPA will notify the requester in writing that the request has been denied.

#### § 310.70 Records retention.

An applicant receiving a reimbursement from the Superfund is required to maintain all cost documentation and any other records relating to the reimbursement request and to provide EPA with access to such records. If, after six years from the date of the reimbursement from the Superfund, EPA has not initiated a cost recovery action, the applicant need retain the records no longer. The applicant must, however, notify EPA and allow EPA the opportunity to take

possession of the records before they are destroyed.

#### § 310.80 Payment of approved reimbursement requests.

A reimbursement from the Superfund can be paid only when Superfund monies are available. An approved request in excess of Superfund appropriations available to EPA may be paid only when additional money is appropriated. As appropriations in the Superfund become available, reimbursements will be made in the order in which approved requests are ranked, according to relative financial burden.

#### § 310.90 Disputes resolution.

The procedures in this section apply to reviews of denial of reimbursement and reviews of amount of reimbursement.

(a) The EPA reimbursement official's decision constitutes final Agency action unless the requester files a request for review by registered mail within 60 calendar days of the date of decision.

(b) The request for review of the EPA reimbursement official's final written decision must be filed with the disputes decision official identified in the final written decision.

(c) The request for review must include:

(1) A copy of the EPA reimbursement official's final decision,

(2) A statement of the amount in dispute

(3) A description of the issues involved and

(4) A concise statement of the requester's objection to the final decision.

(d) After filing for review, the requester:

(1) Is entitled to an informal conference with the EPA disputes decision official,

(2) May be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record and

(3) Is entitled to a written decision from the disputes decision official.

#### Appendix I—EPA Regions and NRC Telephone Lines


EPA regional office	States in region
I—Boston.....	ME, NH, VT, MA, RI, CT.
II—New York.....	NJ, NY, PR, VI.
III—Philadelphia.....	PA, DE, MD, DC, VA, WV.
IV—Atlanta.....	NC, SC, TN, MS, AL, GA, FL, KY.
V—Chicago.....	OH, IN, IL, WI, MN, MI.
VI—Dallas.....	AR, LA, TX, OK, NM.
VII—Kansas City.....	IA, MO, KS, NE.
VIII—Denver.....	CO, UT, WY, MT, ND, SD.
IX—San Francisco.....	AZ, CA, NV, AS, HI, GU, TT.
X—Seattle.....	ID, OR, WA, AK.
National Response Center 1-800-424-8802 (National—toll free) 426-2675 (Washington, DC.)	

BILLING CODE 6560-50-M



# Appendix II—Application for reimbursement to local governments for emergency response to Hazardous Substance Releases Under CERCLA Section 123

Please type or print all information.

		United States Environmental Protection Agency Washington, DC 20460		Form Approved OMB No. xxx-xxxx Expires xx-xx-xx	
<h2 style="text-align: center;">Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Sec. 123</h2>					
<b>1. Local Government Identification</b>					
a. Name of Local Government			b. Contact Name and Telephone Number		
c. Official Address			d. Date of Application		
<b>2. Release Description</b>					
a. Date and Time of Occurrence or Discovery		b. Location			
c. Source or Cause of Release					
d. Hazardous Substances Released and Quantity					
e. Threats to Human Health and Environment					
f. Attach any additional material pertinent to the release					
<b>3. Response Description</b>					
a. Date and Time of Response Action		b. Contact Made With (Check one)			
		<input type="checkbox"/> EPA <input type="checkbox"/> National Response Center <input type="checkbox"/> Other (Specify)			
c. EPA Region		d. Date and Time Contact Made		e. Date of Response Completion	
f. Jurisdiction in Which Response Occurred		g. Is This Jurisdiction Covered by a Title III Emergency Response Plan?			
		(Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No			
h. Responding Agencies and Jurisdictions					



## 3i. Summary of Response Actions

## j. Temporary Emergency Measures for Which Reimbursement Is Sought

## k. Demonstration that Costs Claimed Do Not Supplant Local Funds Normally Provided for Response and Exceed Resources Committed in Local Emergency Response Plan

## l. Attach any additional material pertinent to the response

**4. Cost Information**

## a. Total Response Cost

\$

## b. Total Reimbursement Requested

\$

## c. Complete and Attach Table 1, "Detailed Cost Breakdown"

## d. Attach Evidence of Attempt To Recover Costs

## e. Attach Other Pertinent Financial Information (See Instructions)

**5. Certifications and Authorization**

I hereby certify that (1) all costs are accurate and were incurred specifically for the response for which reimbursement is being requested; (2) the requirement to inform EPA or the U.S. Coast Guard of the response has been met; (3) reimbursement for costs incurred for response activities does not supplant local funds normally provided for response; (4) all other available sources of funds have been pursued and (5) reimbursement funds for which costs are later recovered will be returned to EPA. I further certify that I am authorized to request this reimbursement and to receive funds from the Federal Government.

Printed or Typed Name of Authorized Representative

Signature of Authorized Representative

Title

Date







# 30 CFR Part 736

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**Wednesday  
October 21, 1987**

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## **Part VII**

## **Department of the Interior**

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**Office of Surface Mining Reclamation and  
Enforcement**

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**30 CFR Parts 700 and 736**

**Permanent Regulatory Program; Federal  
Program for a State; Final Rule**



## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Parts 700 and 736

## Permanent Regulatory Program; Federal Program for a State; Public Notice, Comment and Hearing Procedures

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is amending its rules governing the promulgation and revision of a Federal program for a State for coal exploration and surface coal mining operations on non-Federal and non-Indian lands. The rule revises the existing public notice, comment and hearing procedures. In addition, the rule adds to the general provisions in Part 700 a definition of the terms *OSM* and *OSMRE*.

**EFFECTIVE DATE:** November 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343-5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of the Rule
- III. Procedural Matters

**I. Background**

The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, establishing a nationwide program for the regulation of surface coal mining and reclamation operations. To provide a consistent regulatory framework for this nationwide program, section 501(b) of the Act, 30 U.S.C. 1251(b), requires the Secretary of the Interior (the Secretary) to promulgate a permanent regulatory program (the permanent program). The permanent program regulations are grouped in 30 CFR Chapter VII. These regulations include performance standards for surface coal mining and reclamation operations (Subchapter K), and procedures for establishing State and Federal programs (Subchapter C).

A State program may be established pursuant to section 503 of the Act, 30 U.S.C. 1253. A State program, with certain exceptions, gives a State exclusive jurisdiction over the regulation of surface coal mining and reclamation

operations within its borders. Where a State does not establish a State program, section 504 of the Act, 30 U.S.C. 1254, requires the Secretary to establish a Federal program for that State. Standards and procedures that govern Federal programs and their promulgation appear in Subchapter C at 30 CFR Part 736.

Under Part 736 of the permanent program OSMRE has promulgated Federal programs for ten States: Georgia (August 19, 1982; 47 FR 36393); Idaho (April 14, 1983; 48 FR 16218); Massachusetts (September 12, 1983; 48 FR 41000); Michigan (October 22, 1982; 47 FR 47162); North Carolina (June 30, 1983; 48 FR 30298); Oregon (November 2, 1982; 47 FR 49818); Rhode Island (September 12, 1983; 48 FR 40990); South Dakota (April 19, 1983; 48 FR 16818); Tennessee (October 1, 1984; 49 FR 38874); and Washington (February 24, 1983; 48 FR 7870). As provided by 30 CFR 900.13, the rules for each of these Federal programs are codified in 30 CFR Subchapter T under separate parts for each State.

To take full advantage of the existing permanent program performance standards, while avoiding unnecessary repetition, most of the rules that make up each Federal program do not themselves set out detailed requirements, but instead cross-reference a corresponding part in the permanent program. In situations where a cross-reference to the permanent program does not meet the needs of a particular State, the Federal program rule for that State also includes an additional paragraph or paragraphs with appropriate detailed requirements.

For example, the Federal program for the State of Georgia is codified at 30 CFR Part 910. Section 910.842, which governs Federal inspections, in paragraph (a) cross-references the corresponding Part 842 of the permanent program. In addition, paragraph (b) requires OSMRE to furnish to the Georgia Department of Natural Resources upon request a copy of any inspection report or enforcement action taken.

One consequence of this cross-referencing from the Federal programs to the permanent program is that whenever a permanent program rule is revised directly, each Federal program rule which cross-references that permanent program rule also is revised indirectly in a similar way. Thus, in addition to the public notice, comment and hearing procedures that apply to the permanent program, when revising a cross-referenced permanent program rule OSMRE also must comply with the public notice, comment and hearing

procedures that apply to each affected Federal program.

For the promulgation or revision of the permanent program regulations there are no OSMRE rules governing public notice, comment and hearing procedures. OSMRE follows the requirements of section 501 of the Act, 30 U.S.C. 1251, and section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. Generally, section 501 requires OSMRE to provide a 30-day public comment period, and at least one public hearing on a proposed rule. In appropriate cases a longer comment period is provided by OSMRE, and additional public hearings at different locations are scheduled in advance or held on request.

For the promulgation or revision of a Federal program, the public notice, comment and hearing procedures are governed by section 504(c) of the Act. Section 504(c) requires simply that "[p]rior to the promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State."

Prior to this revision, the OSMRE rules at §§ 736.12 and 736.13, which implemented section 504(c), were far more detailed. They included requirements for a public hearing in the affected State; notice in the *Federal Register* at least 60 days before the hearing; placing a copy of the administrative record in an appropriate OSMRE office and a public office in the capital city of the affected State; specified hearing procedures; and notice at least once a week for 3 weeks within the 30 days before the hearing in at least one newspaper of general circulation in the coal mining area of the affected State.

Because most of the permanent program rules are cross-referenced by the ten Federal programs, OSMRE was required to follow these detailed procedures for most revisions of the permanent program. Since there are ten Federal programs, the prior procedures required OSMRE to distribute copies of the administrative record for the revision to ten different States, and to publish at least 30 accurately-timed newspaper notices. Since the permanent program rules continually are undergoing revision, this process, if continued, would have consumed considerable time, money and manpower.

OSMRE believed that procedures far simpler than those of prior §§ 736.12 and 736.13 would give the public adequate opportunity to participate fully in the rulemaking process. OSMRE



reevaluated the procedures in those sections and tentatively concluded that most of them were too elaborate, that they did not produce benefits to the public commensurate with the costs of compliance, and that simpler procedures would not lessen the ability of either OSMRE or the public to meet the requirements and achieve the goals of the Act. Accordingly, OSMRE proposed revisions to §§ 736.12 and 736.13 on March 31, 1987 (52 FR 10352).

In addition to the revision of Part 736, OSMRE also proposed to add a new definition to 30 CFR 700.5. Although the term *OSM* is used throughout existing 30 CFR Chapter VII, it is defined only in § 870.5, which applies only to Parts 870 through 888. Therefore, OSMRE proposed to revise 30 CFR 700.5 by adding a definition of *OSM* that would apply throughout Chapter VII. OSMRE also proposed to revise § 700.5 by adding a definition of *OSMRE*, the preferred acronym for the Agency.

The comment period for the proposed rule closed on June 1, 1987. Only one comment was received. The comment was from a State regulatory agency which indicated that it had no objection to the proposed revision. In view of the lack of objections to the proposed rule, OSMRE has adopted the rule as proposed. A discussion of the rule follows.

## II. Discussion of the Rule

### Definitions—Section 700.5

The rule revises existing 30 CFR 700.5 adding a definition of the terms *OSM* and *OSMRE* to mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act. The definition applies throughout 30 CFR Chapter VII. The existing regulations in Chapter VII will continue to use the term *OSM* until they are otherwise revised.

### Federal Program Notice, Comment and Hearing Procedures—Section 736.12

The rule amends the public notice, comment and hearing procedures OSMRE must follow when promulgating or revising a Federal regulatory program for a State. It simplifies the existing procedures, while continuing to give the public adequate opportunity to participate effectively in the rulemaking process.

Proposed § 736.12 incorporates, with varying degrees of revision, the majority of the procedures found in prior §§ 736.12 and 736.13. The procedures in prior §§ 736.12 and 736.13 that are omitted from § 736.12, are discussed subsequently in their relevant contexts.

### Section 736.12(a) Federal Register notice

Prior to the promulgation or revision of a Federal program for a State, § 736.12(a) requires OSMRE to publish in the *Federal Register* a notice which at a minimum will include five specified items of information.

Paragraph (a)(1) requires that the notice include the basis, purpose and substance of the proposed Federal program or revision. It corresponds with prior §§ 736.12(a)(1) and (a)(2), which required that the *Federal Register* notice include "the bases and purposes of" and "the proposed text of" the Federal program or revision. The term "substance" is substituted for "proposed text" in accordance with section 533(b)(3) of the APA, which requires that a *Federal Register* notice of proposed rulemaking include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." In the context of the promulgation or revision of a Federal program, the term "substance" is the more apt of these APA alternatives.

Paragraph (a)(2) requires that the notice offer the public an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice. This corresponds with portions of prior §§ 746.12(a)(7). However, the mandatory comment period has been reduced from 60 days to the 30 days specified in the APA. This change will afford OSMRE flexibility in instances where the nature of the rulemaking does not justify an extended comment period. When the complexity of a proposed rule or its impact justifies an extended comment period, OSMRE can still provide a 60 day comment period as it has in the past.

The term *data* in prior § 746.12(a)(7) was deleted from this rule because it is included implicitly in the more general term *comments*. A commenter may submit to OSMRE any written information which he or she believes is relevant to the promulgation or revision of a Federal program, including data.

Paragraph (a)(3) requires that in the notice of proposed rulemaking, OSMRE offer to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period, only upon request. This corresponds with portions of prior §§ 736.12(a)(5) and 736.13(c). While section 504(c) of the Act requires OSMRE to hold a public hearing when promulgating a Federal program, this obviously does not include a hearing which no member of the public plans to attend. Prior § 736.13(c) required

OSMRE to hold a public hearing for the promulgation of a Federal program, but for a revision only upon request. This rule requires the public to request a hearing under either circumstance. In addition, there is no longer any requirement to publish the *Federal Register* notice at least 60 days before the date of the hearing, as the prior rule required. The 60 day period was unnecessarily long and it prolonged the rulemaking process without any corresponding public benefit.

Paragraph (a)(4) requires that the notice specify the address of an appropriate place where any person may inspect and copy during normal business hours, a copy of the administrative record for the proposed Federal program or revision. This corresponds with portions of prior §§ 736.12(a)(4) and 736.13(f).

While the prior rule required OSMRE to make available "the text of the proposed program or revision and any supporting information" and "[c]opies of all written comments received and the transcripts of the public hearings," this rule specifies only "a copy of the administrative record." This does not limit the information available to the public, but merely substitutes a more general term that includes all of the information specified by the prior rule.

For the promulgation of a Federal program, the prior rule required OSMRE to make certain information available at both an OSMRE office and a public office in the capital city of the affected State. Paragraph (a)(4) substitutes for these two offices the term "an appropriate place." This might be either an OSMRE office, a State or other public office, a library, or other appropriate facility. This paragraph also differs from the prior requirement in that the location does not have to be in the affected State. This will relieve OSMRE from having to lodge copies of the administrative record for a Federal program revision, which essentially is the administrative record for the underlying permanent program revision, in all Federal program States, which currently are 10 in number. OSMRE believes that for the promulgation or revision of a Federal program, the administrative record located in OSMRE headquarters in Washington, DC, generally is adequate to meet the needs of the public. In cases where there appears to be sufficient demand for a copy of the administrative record in a particular State, OSMRE will consider making one available at an appropriate place in the State. By not specifying any particular office, the rule gives OSMRE maximum flexibility to lodge a copy of the administrative



record at the location where there is the greatest interest in the Federal program or revision.

Paragraph (a)(5) requires for the indirect revision of a Federal program that the **Federal Register** notice state that the affected provision of the permanent program is cross-referenced by the Federal program, and thus that the proposed permanent program revision also would revise the Federal program.

#### *Section 736.12(b) Newspaper notice*

Prior to the initial promulgation of a Federal program for a State, § 736.12(b) requires OSMRE to publish in a newspaper of general circulation in the coal mining area of the affected State a notice like the **Federal Register** notice required by § 736.12(a)(1). For the substance of the proposed Federal program the rule authorizes OSMRE to substitute a brief description in order to avoid the cost of publishing a lengthy newspaper notice. Any person interested in the full text of the proposed Federal program can consult the **Federal Register** notice.

This new provision requires only a single notice, while prior § 736.12(b) required newspaper notice at least once a week for 3 weeks. OSMRE believes that the multiple notice required by the prior rule was unnecessary and that a single notice is adequate to inform the public about, and provide an opportunity to comment on, a proposed Federal program.

While the prior procedures required OSMRE to publish the newspaper notice at least 30 days before the hearing, this rule requires only that OSMRE publish a newspaper notice. The deadline has been removed to accommodate the reduced public comment period. OSMRE intends to publish the newspaper and **Federal Register** notices as concurrently as practicable.

A major difference in new § 736.12(b) as compared to prior § 736.12(b) is the lack of a requirement for newspaper notice of a proposed revision of a Federal program. OSMRE has deleted the requirement for newspaper notice for a revision of a Federal program because it has concluded that for a revision of a **Federal Register** notice is sufficient.

There are two reasons for this conclusion: First, after a Federal program is promulgated for a State any person in that State who is interested in the regulation of surface coal mining is aware of the Federal presence and reasonably can be expected to rely on the **Federal Register** for notice of a revision.

And second, for a revision of the Federal program which is in effect a revision of the permanent program, the nationwide scope of the underlying permanent program revision insures widespread public involvement. Under these circumstances it is unlikely that a newspaper notice would reach any interested persons who were not already aware of the proposed revision.

In addition, OSMRE routinely issues a press release for any rule that is likely to generate public interest. The result is that those persons most interested in, and most likely to comment, on a proposed rule revising a Federal program are aware of the proposal.

Even though there presently are 10 states with full Federal programs, except for operators in Tennessee and Washington, there has been little interest in the revision of a Federal program, and only rarely has a hearing on the promulgation or revision of a Federal Program been requested.

#### *Sections 736.12(c) Federal agency comment*

Prior to the promulgation or revision of a Federal program for a State, § 736.12(c) requires OSMRE, as appropriate, to solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed Federal program or revision. This corresponds with prior § 736.13(a).

The prior procedures required OSMRE to solicit comments from the heads of these agencies in all cases, while this rule requires OSMRE to do so only "as appropriate." Under this rule OSMRE will solicit comments from only those agencies which reasonably might be expected to have comments, and only on those issues of apparent interest to them. OSMRE has made this change to eliminate unproductive correspondence with agencies that are neither concerned with nor have any expertise relevant to a proposed Federal program or revision.

The rule does not contain a procedure corresponding to prior § 736.12(a)(3), which required that the **Federal Register** notice include the proposed effective date of the Federal program or revision. Because of the numerous variables in the rulemaking process, it seldom is possible to predict the effective date of a rule with sufficient accuracy to benefit the public at the proposal stage. To avoid the uncertainties resulting from proposing an inaccurate effective date, OSMRE has deleted this requirement.

#### *Section 736.13 Public comment (Removed)*

This rule removes prior § 736.13. A number of the procedures in that section have been relocated in § 736.12, either with or without additional revision. Other procedures have been eliminated entirely. An explanation of the effect of the rule on each paragraph of this section follows.

#### *Section 736.13(a)*

Prior § 736.13(a) required OSMRE, when proposing to promulgate or revise a Federal program, to solicit comments from the heads of various Federal agencies. A similarly worded, revised version of this paragraph appears in § 736.12(c). The revised version requires OSMRE to solicit Federal-agency comments only "as appropriate." For more information on these changes, see the preceding discussion of § 736.12(c).

#### *Section 736.13(b)*

Prior § 736.13(b) required OSMRE to give the public an opportunity to submit written data and comments on a proposed Federal program or revision within 60 days after publication of a notice in the **Federal Register**. A similarly worded, revised version of this paragraph appears in § 736.12(a)(2). The principal differences in the revised rule are that the comment period has been reduced from 60 to 30 days, and the term *data* has been deleted as superfluous. For more information on these changes, see the preceding discussion of § 736.12(a)(2).

#### *Section 736.13(c)*

Prior § 736.13(c) required OSMRE to hold a public hearing prior to promulgating a Federal program for a State, and upon request prior to revising a Federal program. For promulgation and revision, these procedures have been relocated in § 736.12(a)(3). Unlike prior paragraph (c), § 736.12(a)(3) requires OSMRE to hold a hearing for both promulgation or revision only upon request. For more information on these changes, see the preceding discussion of § 736.12(a)(3).

#### *Section 736.13(d)*

Prior § 736.13(d) authorized OSMRE to hold additional hearings or to solicit additional public comment when appropriate. There is no corresponding procedure in this rule. Paragraph (d) was removed as superfluous because notwithstanding the prior rule OSMRE had sufficient authority to do either of these things. Even though the paragraph is being removed to simplify the rule, OSMRE will continue to hold additional



hearings or to solicit additional public comment when the public interest in a particular rule warrants.

#### Section 736.13(e)

Prior § 736.13(e) required OSMRE to transmit to the Director all public comments, hearing transcripts and related materials. This requirement is implicit in § 736.14(a), which requires the Director to consider such information in deciding whether to promulgate or revise a Federal program. Therefore, OSMRE has removed this paragraph as superfluous.

#### Section 736.13(f)

Prior § 736.13(f) required OSMRE to make available for public inspection and copying at the appropriate OSMRE office, and at a public office in the capital city of the affected State, copies of all written comments and hearing transcripts. A revised version of these procedures is relocated in § 736.12(a)(4), which unlike paragraph (f) requires OSMRE to make "a copy of the administrative record" available only at "an appropriate place." For more information on these changes, see the preceding discussion of § 736.12(a)(4).

#### Section 736.14 Director's decision

This rule also makes a technical change in § 736.14, which governs the Director's decision on a proposed Federal program or revision. The reference to "§ 736.13 has been changed to § 736.12 of this part" to conform with the changes the rule makes in the referenced sections. This will not have any substantive effect on § 736.14, itself, which except for this technical change remains the same.

### III. Procedural Matters

#### Effect in Federal Program States

The revisions to Part 700 of this rule apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. No comments were received concerning unique conditions which exist in any of these States which would have required changes to the national rule or State-specific amendments to any of the Federal programs.

#### Federal Paperwork Reduction Act

The rule does not contain any information collection requirements requiring approval by the Office of

Management and Budget under 44 U.S.C. 3507.

#### Executive Order 12291

The DOI has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The procedures the rule amends are strictly administrative and do not involve any major economic costs.

#### Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not have a significant economic impact on a substantial number of small entities. The rule amends administrative procedures which have no significant economic impact.

#### National Environmental Policy Act

This rule is categorically excluded from the National Environmental Policy Act of 1969 (NEPA) process under DOI Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

#### Author

The principal author of this rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone 202-343-5241.

#### List of Subjects

##### 30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

##### 30 CFR Part 736

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 700 and 736 are amended as follows:

Date: September 16, 1987.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

### PART 700—GENERAL

1. The authority citation for Part 700 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34.

2. Section 700.5 is revised by adding in alphabetical order a new definition as follows:

#### § 700.5 Definitions.

OSM and OSMRE mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

### PART 736—FEDERAL PROGRAM FOR A STATE

3. The authority citation for Part 736 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34.

4. Section 736.12 is revised to read as follows:

#### § 736.12 Notice, comment and hearing procedures.

Prior to the promulgation or revision of a Federal program for a State, OSMRE shall:

(a) *Federal Register notice.* Publish in the *Federal Register* a notice which:

(1) Includes the basis, purpose and substance of the proposed Federal program or revision;

(2) Offers any person an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice;

(3) Offers to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period if requested by any person;

(4) Gives the address of an appropriate place where any person, during normal business hours, may inspect and copy a copy of the administrative record for the proposed Federal program or revision;

(5) For an indirect revision of a Federal program, states that the affected provision of the permanent program is cross-referenced by the Federal program, and thus that the proposed permanent program revision also would revise the Federal program;

(b) *Newspaper notice.* For the initial promulgation of a Federal program for a State, publish in a newspaper of general circulation in the coal mining area of the affected State a notice concerning the proposed rulemaking which includes the information required by paragraph (a) of this section, except that for the substance of the proposed Federal program or revision OSMRE may substitute a brief description; and

(c) *Federal agency comment.* As appropriate, solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or



having special expertise relevant to the proposed Federal program or revision.

§ 736.13 [Removed]

5. Section 736.13 is removed.

6. Paragraph (a) of § 736.14 is revised to read as follows:

§ 736.14 Director's decision.

(a) After considering all relevant information received under § 736.12 of this part, the Director shall decide whether to promulgate or revise a Federal program for the State.

\* \* \* \* \*

[FR Doc. 87-24352 Filed 10-20-87; 8:45 am]

BILLING CODE 4310-05-M



# Initial Sequestration Report Federal Reserve

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Wednesday  
October 21, 1987

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## Part VIII

### Office of Management and Budget

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Initial Sequestration Report for Fiscal  
Year 1988; Notice



**OFFICE OF MANAGEMENT AND  
BUDGET****Initial Sequestration Report for Fiscal  
Year 1988**

**AGENCY:** Office of Management and  
Budget.

**ACTION:** Report transmittal.

---

**SUMMARY:** This notice transmits the  
initial Sequestration Report for Fiscal  
Year 1988 in accordance with the  
provisions of the Balanced Budget and  
Emergency Deficit Control Reaffirmation  
Act of 1987, Public Law 100-119.

**BILLING CODE** 3110-01-M





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

October 20, 1987

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

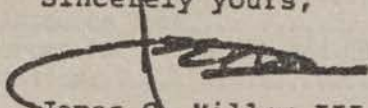
In accordance with the requirements of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119, I hereby submit to you my initial Sequester Report for fiscal year 1988. As required by law, this report is being submitted simultaneously to the President and Congress.

The budget estimates contained in this report are based on laws and regulations in effect on October 10, 1987. Because no full-year appropriations bills for fiscal year 1988 have been enacted, they are based on appropriations for fiscal year 1987, adjusted for inflation and pay costs as specified in the Act. Also, because no deficit reduction has been achieved since January 1, 1987, the report provides calculations of the amounts and percentages by which various budgetary resources must be sequestered to achieve the full \$23 billion deficit reduction required by the Act.

The report is in two parts: a summary and a detailed appendix that lists sequestration reductions by agency and budget account. The summary section includes the economic assumptions, the projected budget baseline levels, a discussion of the sequestration calculations, and comparisons with the estimates provided by the Acting Director of the Congressional Budget Office in his report of October 15th.

With best wishes, I remain,

Sincerely yours,



James C. Miller III  
Director

IDENTICAL LETTERS SENT TO HONORABLE GEORGE BUSH,  
HONORABLE JAMES C. WRIGHT, JR.



INITIAL OMB SEQUESTER REPORT FOR FISCAL YEAR 1988  
A REPORT TO THE PRESIDENT AND CONGRESS

October 20, 1987



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## GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.
2. Details in the tables and text may not add to totals because of rounding.
3. The source of all data in this report is the Office of Management and Budget unless otherwise noted.



## INTRODUCTION

The Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as revised by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), stipulates that budget deficits must be decreased annually and specifies measures that must be taken to achieve this result. The target amounts specified by the revised Act, excluding a \$10 billion margin-of-error amount for 1988 through 1992, are:

Budget Targets  
(in billions of dollars)

Fiscal Year	Maximum Deficit	Required Reductions from January 1 Baseline	
		Minimum	Maximum
1988.....	144.0	23.0	23.0
1989.....	136.0	None	36.0
1990.....	100.0	N/A	N/A
1991.....	64.0	N/A	N/A
1992.....	28.0	N/A	N/A
1993.....	zero	N/A	N/A

N/A Not Applicable

If deficit-reducing measures sufficient to achieve the targets are not enacted, then a sequestration of budgetary resources must occur. The conditions under which a sequester would be triggered are:

- For 1988 only, if the amount of net deficit reduction achieved through laws enacted and regulations promulgated between January 1, 1987 and November 20, 1987 is less than \$23 billion. Because the Act sets a \$23 billion deficit reduction target for 1988, the 1988 deficit target of \$144 billion and the \$10 billion margin-of-error amount do not affect sequestration.



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- For 1989 only, if the estimated deficit on October 10, 1988 exceeds \$146 billion (the \$136 billion deficit target plus the \$10 billion margin) and the amount of net deficit reduction achieved through laws enacted and regulations promulgated between January 1, 1988 and the issuance of the final report in October 1988 is less than \$36 billion.
- For 1990 through 1992, if the estimated deficit at the beginning of each fiscal year exceeds the deficit target by more than \$10 billion.
- For 1993 only, if there is any deficit estimated on October 15, 1992.

In general, sequestration is the permanent cancellation of new budget authority and other authority to obligate and expend funds. The amount of the sequestration is calculated to achieve outlay reductions sufficient to reach the deficit targets, except for 1988 and 1989, when the outlay reductions that can be achieved through sequestration are limited to \$23 billion and \$36 billion, respectively.

Under the revised Act, the Director of the Office of Management and Budget (OMB) is to determine each year whether or not sequestration is necessary and the magnitude of sequestration. The Congressional Budget Office (CBO) plays an advisory role in this process. Each year, the two agencies are required to prepare independently two sets of sequestration reports. The CBO reports are transmitted to the Director of OMB and to Congress, and they provide a benchmark against which Congress and others may assess the OMB reports. The OMB reports are made to the President and to Congress, and they provide the basis for sequestration orders to be issued by the President. The timetable for the agency reports and sequestration orders is as follows:

Report or Order	For 1988	For 1989-1993
Snapshot date for initial OMB and CBO reports	October 10	August 15
Initial CBO report	October 15	August 20
Initial OMB report	October 20	August 25
Initial sequestration order	October 20	August 25
Revised CBO report	November 16	October 10
Revised OMB report	November 20	October 15
Final sequestration order	November 20	October 15

The initial OMB and CBO sequestration reports are to be based on laws enacted and regulations promulgated as of a common "snapshot date" (e.g., October 10th



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for the 1988 reports). The revised reports, however, must be based on laws enacted and regulations promulgated as final by the latest possible date before they are issued. Because this second "snapshot date" may be different in the final reports of the two agencies, some legislation and regulations reflected in the OMB report may not be reflected in the CBO report, which is issued earlier.

Under the revised Act, the first step in the new sequestration process for 1988 was the initial sequestration report on October 15, 1987 by the Director of CBO to the Director of OMB and Congress, providing CBO's estimates of the baseline and sequester calculations. The second step is this report, which the Director of OMB provides to the President and Congress. It estimates the same measures as the CBO report, but as provided by the revised Act its estimates are based on the economic and technical assumptions OMB used in the joint OMB-CBO Initial Sequestration Report of August 20, 1987 (required under the original Act). Under the revised Act, explanations of significant differences between the estimates in the separate OMB and CBO reports are required (and provided) in this report. In particular, this report:

- Estimates budget baseline levels, including the amount by which the projected deficit exceeds the maximum deficit amount for the fiscal year covered by the report;
- Estimates the achieved and unachieved net deficit reduction amounts;
- Provides OMB economic assumptions, including the estimated rate of real economic growth;
- Calculates the amounts and percentages by which various budgetary resources must be sequestered in order to achieve the required deficit reduction; and
- Presents and explains significant differences between the estimates in this report and the estimates CBO presented in its report of October 15th.

Because this report indicates that \$23 billion in reductions are required for 1988, the President is required to issue an initial sequester order withholding sufficient funds to reduce outlays by that amount. The initial order for fiscal year 1988 is being issued, and becomes effective, today -- October 20, 1987.

A final sequestration report and a final sequester order for 1988 are to be issued on November 20, 1987. The final report will take into account additional deficit reduction measures enacted after or promulgated by that date.



## BUDGET BASELINE TOTALS FOR 1988

This report deals only with 1988. The OMB estimates of baseline revenues, outlays, and the deficit for 1988 are shown in Table 1. These estimates are made in accordance with the specifications set forth in the revised Act. The budget baseline estimates used in this report assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, except that expiring provisions of law providing revenues and spending authority are assumed to terminate as scheduled. <sup>1/</sup>

Because no full-year appropriations bills have yet been enacted for 1988, the estimates for discretionary spending accounts that require appropriations are based on the appropriations enacted for 1987, adjusted only for inflation and pay-related costs, as specified by the Act. The baseline estimates are also required to include the receipts and outlays of the off-budget social security trust funds, but social security benefits themselves are exempt from sequestration.

Table 1.--Baseline Totals for 1988  
(in billions of dollars)

<u>Budget Aggregates</u>	<u>January Baseline</u>	<u>October Baseline</u>
Revenues.....	903.0	903.0
Outlays.....	1065.2	1066.0
Deficit.....	162.2	163.0

OMB's deficit estimate for 1988 based on laws and regulations in effect as of October 10, 1987 is \$163.0 billion, which exceeds the maximum deficit amount of \$144.0 billion by \$19.0 billion and exceeds the \$10 billion margin by \$9.0 billion. Because the current baseline deficit exceeds the comparable baseline deficit based on laws and regulations in effect as of January 1, 1987, the unachieved deficit reduction remains at the full \$23 billion specified in the Act. The sequestration amounts required to achieve the \$23 billion outlay reduction are discussed in a separate section below.

<sup>1/</sup> The Act permits an exception to the expiring-provision assumption for excise taxes dedicated to a trust fund (but not for spending authority in that trust fund), for Commodity Credit Corporation price support programs, and for contract authority for transportation trust funds.



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## SIGNIFICANT DIFFERENCES BETWEEN AUGUST AND OCTOBER OMB BASELINES

To develop the baseline estimates for this report, the revised Act requires that certain adjustments be made to the baseline estimates developed by OMB in the joint OMB-CBO Sequestration Report for Fiscal Year 1988 published on August 20th. (See pp. 31530-31600 of the August 20, 1987 Federal Register.)

As shown in Table 2, OMB's estimate of the October baseline deficit is \$26.1 billion above its August 20th baseline estimate. The difference is the result of the following assumptions and adjustments required by the revised Act:

- The law requires that most discretionary appropriations be adjusted upward from their 1987 enacted levels for 4.2 percent inflation in non-pay activities. Pay-related activities are adjusted for established Federal employee pay raises (2 percent, effective January 1, 1988) and other increases in personnel costs. However, the pay-raise costs are reduced by 22 percent to account for the historical level of absorption of such costs. Together, these adjustments add \$11.1 billion to baseline outlays.
- The law requires that those appropriated entitlements identified in the revised Act and the food stamp program be fully funded and that an assumption be made that legislation will be enacted to increase benefit payments for veterans compensation for cost-of-living increases. Shifting these programs to 1988 current services levels adds \$5.0 billion to baseline outlays.
- The law requires that baseline estimates for the Commodity Credit Corporation farm price support programs assume that the Secretary of Agriculture will use his discretionary authority to establish advanced deficiency payments and paid land diversion programs in each year. Together, these assumptions add \$5.7 billion to baseline outlays.
- The law requires that the initial baseline estimates for medicare be based upon final or proposed regulations. The law also requires that the baseline exclude any changes in administrative procedures that increase or decrease the average number of days for the payment of medicare claims compared to the average for 1987. The law also enacts a temporary freeze on payment rate increases and other regulatory changes that would otherwise be in effect from October 1, 1987 through November 20, 1987. On net, these provisions increase medicare baseline outlays by \$1.6 billion.
- The law prohibits the inclusion in the baseline of asset sales or loan prepayments unless the sales were mandated by law before September 18, 1987, or unless the sales or prepayments are considered to be routine, ongoing sales or prepayments at levels consistent with agency operations in fiscal year 1986. This provision requires the removal of the new debt restructuring/loan prepayment program from the foreign military sales credit baseline estimates, which adds \$1.3 billion to baseline outlays, and removal of certain prepayments from the Export-Import Bank baseline estimates, which adds \$0.2 billion to



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## baseline outlays.

- The law requires that the expiring provisions of law providing funding for the airport-airways grant program be assumed to continue in the baseline estimates, adding \$0.2 billion to baseline outlays.
- Debt service (interest) costs associated with the higher baseline deficit add the remaining \$1.0 billion.

Two other new provisions regarding assumptions for the baseline were added in the revised Act but have no impact on the original baseline deficit estimates for 1988 as published in August. The first requires a consistent proportional relationship between increases in revenues attributable to increased appropriations for Internal Revenue Service administration and enforcement assumed in the baseline with the comparable estimates submitted in the President's budget. The second prohibits counting in the baseline, or in the estimates of net deficit reduction achieved, the effects of the transfer of Government actions from one fiscal year to an adjacent fiscal year unless specific requirements are met.



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Table 2.--Differences Between August and October  
OMB Baseline Deficits  
(in billions of dollars)

August 20th OMB Baseline Deficit Estimate.....	136.8
Major changes:	
National Defense:	
Inflation and pay raise adjustments.....	6.4
Appropriated Entitlements.....	0.1
Total National Defense.....	<u>6.5</u>
Nondefense:	
Inflation and pay raise adjustments.....	4.8
Appropriated Entitlements*.....	4.9
CCC advanced deficiency and land diversion payments.....	5.7
Medicare assumptions.....	1.6
Foreign military sales credit (removal of debt restructuring).....	1.3
Export-Import Bank (removal of certain loan prepayments).....	0.2
Extension of airport-airways grant program.....	0.2
Debt service on above changes.....	1.0
Total Nondefense.....	<u>19.7</u>
Total changes.....	<u>26.1</u>
October 20th OMB Baseline Deficit.....	163.0

\* Includes food stamp program and cost-of-living increase for veterans compensation.



## NET DEFICIT REDUCTION ACHIEVED SINCE JANUARY 1, 1987

As shown in Table 3, laws enacted and regulations issued between January 1st and October 10th of this year have, on net, increased rather than decreased the baseline deficit. The largest decrease results from the establishment of Federal pay raises of 2 percent for 1988 under the President's alternative plan (adjustments are to take effect on January 1, 1988). Because the January baseline estimates are required to assume a 4.2 percent pay raise for 1988, the lower 2 percent rate established under the President's plan puts outlays for pay and related personnel benefits \$1.1 billion below the January baseline levels. Other legislation enacted during this period that reduced the deficit by at least \$0.1 billion include the Surface Transportation and Relocation Act of 1987 (\$0.1 billion), the Competitive Equality in Banking Act of 1987 (\$0.6 billion), and the Balanced Budget Reaffirmation Act of 1987 (\$0.1 billion).

The Supplemental Appropriations Act, 1987 more than offsets the deficit reductions discussed above. Directly, this legislation adds \$0.9 billion to 1988 outlays through expenditure in 1988 of balances of budgetary resources added by the Act. Moreover, under the specifications for the October baseline, the \$2.5 billion in budgetary resources for items other than increased personnel costs provided for 1987 are also included as new budgetary resources for 1988, increased by an adjustment for inflation. These new budgetary resources for 1988, in turn, add \$1.7 billion in new spending to the October baseline for 1988. Thus, the total effect of the 1987 supplemental on 1988 baseline spending is to increase it by \$2.6 billion.

New medicare regulations account for a \$0.1 billion increase in the baseline deficit since January 1st. The remaining changes, including debt service on all changes, increase the baseline deficit by \$0.2 billion.



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Table 3.--Net Deficit Reduction Achieved Since January 1987  
(in billions of dollars)

January Baseline Deficit.....	162.2
Deficit Reduction (-) or Increase:	
Supplemental Appropriations, 1987 (P.L. 100-71).....	2.6
Medicare regulations.....	0.1
Surface Transportation and Relocation Act (P.L. 100-17)...	-0.1
Balanced Budget Reaffirmation Act of 1987 (P.L. 100-119)...	-0.1
Competitive Equality in Banking Act of 1987 (P.L. 100-86)...	-0.6
Other legislation enacted since January 1, 1987 a/.....	-*
Federal employee pay raises established October, 1987 b/..	-1.1
Debt service (interest).....	0.2
Net deficit reduction achieved (-) or deficit increase.....	0.8
October Baseline Deficit.....	163.0

a/ Public laws 100-4, 6, 14, 20, 45, 72, 92, and 93.

b/ Estimated reduction resulting from 2 percent pay raises established in October compared to 4.2 percent pay raises assumed in the January baseline.

\* \$50 million or less.

#### ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the OMB baseline estimates for 1988 are shown in Table 4.

The Act requires the OMB Director to estimate the rate of real economic growth for the fiscal year covered by his report, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than one percent for two consecutive quarters, Congress can suspend many of the provisions of the Act. The OMB estimates for the rate of real economic growth for fiscal year 1988 are included in Table 4, and the quarterly estimates are shown in Table 5. As required by the revised Act, these are the same assumptions used by OMB in the joint OMB-CBO report published on August 20th. Neither office projects real economic growth to be less than zero in any quarter during 1987 or 1988.



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Table 4.--Economic Assumptions  
(Fiscal Year 1988)Economic Variable

Gross National Product:	
Current dollars (in billions of dollars).....	4,742
Percent change, year over year.....	7.5
Constant (1982) dollars (in billions of dollars).....	3,902
Percent change, year over year.....	3.2
GNP Implicit Price Deflator (percent change, year over year)....	4.2
CPI-W (percent change, year over year).....	4.5
Civilian Unemployment Rate (percent, fiscal year average).....	6.1
Interest Rates (fiscal year average):	
91-day Treasury bills.....	5.6
10-year Treasury notes.....	7.8

Table 5.--Real Economic Growth Rates by Quarter  
(in percents, annual rates)

FY 1987			FY 1988 Estimates			
Actual	Estimate					
Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep
1987 a/	1987 a/	1987	1987	1988	1988	1988
4.4	2.6	2.7	3.2	3.5	3.5	3.5

a/ As reported by the Department of Commerce (July 24, 1987) and published in the August 20 Joint Report by OMB and CBO. Subsequent to the Joint Report, the Department of Commerce revised the "actual" for April - June 1987 to 2.5 percent.



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## SEQUESTERABLE RESOURCES

The required reductions in outlays are not made directly; rather, they are to be achieved by the permanent cancellation -- referred to under the Act as "sequestration" -- of budget authority and other authority to obligate and expend funds (except that amounts sequestered in special and trust funds remain in such funds). For defense programs, sequesterable budgetary resources are defined to be new budget authority provided for 1988 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority; new direct loan obligations, commitments, or limitations; new guaranteed loan commitments or limitations; obligation limitations, and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes various mandatory and permanent appropriations, as well as Federal payments financed by offsetting collections that are credited to budget accounts.

Not all budgetary resources are subject to sequestration. The Act exempts a number of programs and activities of the Federal Government from the sequestration process. As shown in Table 6, the largest are social security benefits, net interest, certain low-income programs, most Federal retirement and disability benefits, veterans compensation and pensions, and regular State unemployment insurance benefits. Also exempt from sequestration are prior legal obligations of the Government in certain specified budget accounts, as well as the program bases for certain programs whose automatic spending increases are subject to sequester. Federal administrative expenses for most otherwise exempt programs and activities, however, are sequesterable, including programs that are self-supporting. Outlays from obligated balances for defense programs and outlays from obligated and unobligated balances of prior-year appropriations for nondefense programs are generally not subject to sequestration. In addition, the President is granted authority, which he has notified Congress he will use, to exempt all military personnel accounts from sequester. As a result, the remaining sequesterable accounts for defense are subject to a higher uniform percentage reduction than they would have been otherwise.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration reduction for medicare, veterans medical care, and certain health programs (but not for the administrative expenses of these programs) is limited to two percent annually. In addition, the total amount of the automatic spending increases in three programs specified in the Act is sequesterable.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and guaranteed loan commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual appropriation acts be reduced, and that de facto limitations be imposed on both types of new credit activity where there is no enacted limitation.



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## COMPOSITION OF BASELINE OUTLAYS

Table 6 provides further detail on the OMB baseline outlay estimates for 1988. An estimated \$109.2 billion of 1988 outlays for defense programs, or 38 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction (after exemption of military personnel accounts by Presidential authority).

An estimated \$208.2 billion of outlays for nondefense programs, or 27 percent of total nondefense outlays, are associated with sequesterable budgetary resources. About \$100.1 billion of these outlays, or 13 percent of total nondefense outlays, are associated with programs with automatic spending increases and certain special rule programs, the largest of which is medicare. The Act limits the extent of spending reductions for these programs.

Of the total estimated 1988 nondefense outlays of \$776.6 billion, an estimated \$108.1 billion -- about 14 percent of nondefense outlays -- are associated with budgetary resources subject to an across-the-board percentage reduction. <sup>2/</sup> An estimated \$568.5 billion of nondefense outlays, or 73 percent of total nondefense outlays, are exempt from sequestration.

For defense and nondefense programs combined, an estimated \$748.6 billion in outlays, or 70 percent of total outlays, are associated with budgetary resources exempt from sequestration.

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<sup>2/</sup> The estimated \$108.1 billion nondefense total subject to across-the-board reduction shown in Table 6 does not include \$7.2 billion of 1989 outlays for CCC or \$2.3 billion in outlays from offsetting collections in 1988. The sum of these figures is \$117.6 billion, the estimated nondefense outlays associated with across-the-board sequesterable budgetary resources shown in Table 7.



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Table 6.--Composition of Baseline Outlay Estimates for 1988  
(dollar amounts in billions)

	Estimate	Percent of Total
Defense Programs <u>a/</u> :		
Subject to across-the-board reduction <u>b/</u>	109.2	10.2
Exempt from sequestration <u>c/</u> .....	180.1	16.9
Subtotal, defense programs.....	289.3	27.1
Nondefense Programs:		
Subject to sequestration:		
Certain programs with automatic spending increases <u>d/</u> .....	0.1	*
Certain special rule programs <u>e/</u> .....	100.0	9.4
Subject to across-the-board reductions <u>f/</u> .	108.1	10.1
Subtotal, subject to sequestration.	208.2	19.5
Exempt from sequestration:		
Social security.....	218.2	20.5
Federal retirement, disability, and workers compensation.....	52.0	4.9
Earned income tax credit.....	2.9	0.3
Low-income programs <u>g/</u> .....	70.4	6.6
Veterans compensation and pensions.....	14.5	1.4
State unemployment benefits.....	14.9	1.4
Offsetting receipts.....	-61.3	-5.8
Net interest.....	145.9	13.7
Other <u>h/</u> .....	111.0	10.4
Subtotal, exempt from sequestration	568.5	53.3
Subtotal, nondefense programs.....	776.7	73.2
Total.....	1,066.0	100.0

a/ Budget function 050, excluding FEMA programs.

b/ Excludes military personnel accounts exempted by Presidential authority.

c/ Largely outlays from military personnel accounts, which were exempted by Presidential authority, and outlays from obligated balances.

d/ National Wool Act, special milk, and vocational rehabilitation programs.

e/ Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.

f/ Excludes outlays from offsetting collections and 1989 outlays for the Commodity Credit Corporation (CCC), both of which enter the sequestration calculation in Table 7 below.

g/ Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC.

h/ Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs.

\* 0.05 percent or less.



## SEQUESTRATION CALCULATIONS

The revised Act establishes the following steps for the sequestration calculations for fiscal year 1988.

First, the unachieved deficit reduction to be achieved through sequester is calculated by subtracting the estimated net deficit reduction achieved amount, if any, from the \$23 billion target. One-half of the unachieved deficit reduction is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

Second, all savings from eliminating automatic spending increases in three specific programs -- the National Wool Act, the special milk program, and vocational rehabilitation -- are applied to the required reduction in outlays for nondefense programs.

Third, the amount of outlay savings to be obtained by applying two of the four special rules is calculated. These special rules are for guaranteed student loans and for foster care and adoption assistance. The estimated savings from these special rules are applied toward the required spending reductions in nondefense programs. If the nondefense sequester percentage is greater than two percent, the savings from applying two additional special rules for medicare and certain other health programs are also calculated at this stage and applied toward the required spending reductions for nondefense. All four of these special rules are discussed later in this report.<sup>3/</sup>

The reductions in defense programs and remaining reductions in nondefense programs must be taken on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved separately in defense and nondefense spending are divided by the estimated outlays associated with sequesterable budgetary resources in each category. The two resulting uniform reduction percentages for defense and nondefense are then applied separately to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) in each category.

Table 7 shows the calculations for each of the steps described above. The total required outlay reduction for 1988 is \$23.0 billion, one-half of which -- \$11.5 billion -- must be obtained from defense programs and the other half from nondefense programs.

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<sup>3/</sup> A number of special rules apply to other programs, such as the Commodity Credit Corporation, but they do not enter into the sequester calculations at this step.



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Table 7.--Sequestration Calculations for 1988  
(in millions of dollars)

Category

Required Deficit Reduction.....	23,000
Net Deficit Reduction achieved.....	---
Aggregate Outlay Reduction required.....	23,000
Defense Programs:	
Total required outlay reductions.....	11,500
Estimated outlays associated with across-the-	
board sequesterable budget resources <u>a/</u> .....	109,192
Uniform reduction percentage.....	10.5
Nondefense Programs:	
Total required outlay reductions.....	11,500
Estimated savings from automatic spending	
increases.....	20
Estimated savings from the application of	
special rules:	
Guaranteed student loans.....	23
Foster care and adoption assistance.....	9
Medicare.....	1,220
Other health programs.....	185
Amount remaining to be obtained from uniform	
percentage reductions of budget resources.....	10,044
Estimated outlays associated with across-the-board	
sequesterable budget resources <u>b/</u> .....	117,598
Uniform reduction percentage.....	8.5

a/ Excludes military personnel accounts exempted under Presidential authority.

b/ Includes \$7,163 million in estimated 1989 outlays for the Commodity Credit Corporation (CCC) that can be affected by a 1988 sequester (see discussion of special rule for the CCC) and \$2,342 million in outlays from offsetting collections.

The outlay reductions of \$11.5 billion in defense programs in 1988 must be obtained by reducing new budget authority and unobligated balances for sequesterable accounts by a uniform percentage. The 1988 outlays associated with sequesterable budgetary resources for defense programs (after Presidential exemption of military personnel accounts) are estimated to be \$109.2 billion. Thus, the uniform percentage to be applied to sequesterable defense budgetary resources is 10.5 percent.



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An estimated \$20 million in nondefense savings can be obtained by eliminating the automatic spending increase for the National Wool Act program and the vocational rehabilitation program. The special milk program is also an indexed program covered under this rule, but in 1988 the change in the price index is projected to be below the threshold needed to trigger an increase. The outlay savings for programs where the spending reductions are limited by special rules (guaranteed student loans, foster care and adoption assistance, medicare, and several other health programs) are estimated to be \$1.4 billion. After crediting these savings against the \$11.5 billion nondefense reduction target, \$10.0 billion remains to be achieved by uniform across-the-board reductions on \$117.6 billion of outlays. Thus, the uniform percentage to be applied to remaining sequesterable nondefense budgetary resources is 8.5 percent.

The calculations generally assume that all nonexempt budgetary resources can be sequestered to produce outlay savings, including entitlement programs and other mandatory spending programs for which the spending authority is not controlled through the annual appropriations process. In a few instances the uniform percentage reduction of budgetary resources would not produce any outlay savings. Two examples are credit programs with new direct loan limits higher than expected program levels and intragovernmental payments to revolving funds -- such as Government payments for annuitants, Federal employee health benefits. For such cases, no outlays were included in the sequester base used for calculating the uniform reduction percentages.

#### AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Balanced Budget and Emergency Deficit Control Act are listed in Table 8. The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be achieved by eliminating these increases.



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Table 8.--Automatic Spending Increases for 1988 Subject to Sequestration  
(outlay amounts in millions of dollars)

<u>Program</u>	<u>Scheduled Increase (percent)</u>	<u>Sequestration Outlay Reductions</u>
National Wool Act a/.....	3.5	4
Special milk program b/.....	---	---
Vocational rehabilitation c/.....	1.57	15
Total.....		20

- a/ Payment increases are based on changes in the wool parity price.  
 b/ Benefits are indexed to the Producer Price Index for Fresh Processed Milk. This index is not projected to increase between May 1987 and May 1988.  
 c/ The automatic spending increase for this program, as specified in the program's authorizing legislation, results in a 1.57 percent increase in funding for the State grant portion of the program.

#### SPECIAL RULES

The Act provides special rules for the sequestration of budgetary resources for certain Federal programs. This section describes these special rules and their application to the 1988 sequestration calculations. Because the nondefense sequester percentage is greater than 2.0 percent, the estimated outlay savings derived from the first four rules are shown separately in Table 7. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

#### Guaranteed Student Loan Program

Under sequestration, two changes are required to occur automatically in the guaranteed student loan (GSL) program. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage points or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0.25 percentage points. Second, a student's origination fee will increase by 0.50 percentage points. In both cases, sequestration affects only GSL loans disbursed during the applicable fiscal year, but after the order is issued. For 1988, these changes are estimated to reduce outlays by \$23 million.



#### Foster Care and Adoption Assistance Programs

The Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, the reductions are limited to the extent that they can be made by reducing Federal matching payments by a uniform percentage across States. The increases in payment rates for these programs are made by the States and localities. Any increases planned by the States for fiscal year 1988 were included in the OMB calculations for sequestration reductions. The estimated outlay savings in 1988 from sequestration are \$9 million.

#### Medicare

The sequestration reductions in the medicare program are to be achieved by reducing payment amounts for covered services. No changes in co-insurance or deductible obligations are to be made, and covered services are unaffected under a sequestration order. Based on the need for an \$11.5 billion nondefense sequester in 1988, the maximum annualized reduction of 2 percent is required. The medicare special rules require that no reduction in payment amounts be made for services received between October 1 and November 20, during fiscal year 1988, but that the reduction in payment amounts for services rendered after November 20 be established so that the annual reduction is 2.0 percent. As a result, under the sequester order, each payment amount for services provided during November 21, 1987 and September 30, 1988 would be reduced by 2.3 percent relative to whatever level of payment would otherwise be made under medicare law and regulation. The estimated outlay savings to be achieved in 1988 by applying this special rule are \$1.2 billion.

#### Veterans Medical Care and Other Health Programs

Even though the nondefense sequester would require a higher percentage reduction, the Act limits reductions in budget authority for the non-administrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1988 and any subsequent year. The estimated outlay savings to be achieved in 1988 by applying this special rule in these programs are \$185 million.

#### Child Support Enforcement Program

For the child support enforcement (CSE) program, the Act provides that sequestration of entitlement payments to States, including grants to States for interstate projects from the Family Support Administration's program administration account, is to be accomplished by reducing the Federal matching rates for State administrative expenses. For 1988, the Federal matching rate on most expenditures would be reduced from 68.0 percent to 60.5 percent, and the rate for computer-related expenditures would be reduced from 90.0 percent to 80.1 percent. This reflects a reduction in the matching rates to achieve the same 8.5 percent reduction applied to other nondefense programs, adjusted to allow also for the sequestration of spending on interstate grants.



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If States increase their share of CSE spending to maintain total program spending at the expected 1988 level, this reduction in the Federal matching rate will lower Federal outlays by the same percentage as other nondefense programs. If States do not increase their 1988 budgeted amounts to compensate for lower matching rates, however, the lower Federal matching rate would result in a larger percentage reduction in Federal spending than the Act requires. The estimated outlay savings to be achieved in 1988 by applying this special rule are \$86 million.

#### Unemployment Compensation Programs

The Act provides that the following items may not be sequestered: regular State unemployment benefits, the State share of extended unemployment benefits, benefits paid to former Federal employees and former members of the armed services, and loans and advances to the State and Federal unemployment accounts. The Federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and State and Federal administrative expenses may be sequestered.

Both the Federal and State shares of extended unemployment benefits are paid from the unemployment trust fund -- the Federal share from the Federal account and the State share from each State's account. The amount of each weekly extended benefit is set by State law. The Act permits any State to reduce the weekly extended benefit amount by a percentage equal to the percentage reduction in the Federal share. If States do not change their laws to provide for such a reduction, weekly benefit payments will not be reduced, the State share will increase by the amount of the decrease in the Federal share, and total budget outlays, which include both Federal and State benefits, will not be changed by the sequestration. The only State expected to be paying extended benefits in 1988 (Alaska) has not taken action to reduce its weekly benefit amount in the event of a sequestration.

#### Commodity Credit Corporation

The Act requires that payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year be subject to a percentage reduction. The Act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within CCC's jurisdiction. The Act further stipulates that outlay reductions in the post-sequester year that are the result of contract adjustments in the sequester year should be credited to the overall outlay reduction required in the sequester year. The amount of outlay savings to be achieved by applying this special rule is estimated to be \$0.8 billion in 1988, and \$0.6 billion in 1989. In accordance with the Act, however, all \$1.4 billion of these estimated outlay savings are credited toward the \$11.5 billion nondefense spending reduction required for 1988.



### Federal Pay

The Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced pursuant to a sequestration order. Budgetary resources available for Federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses. The total amount of Government-wide savings to be achieved in 1988 from reducing available funds for employee compensation cannot be separately estimated because program managers are urged not to resort to personnel furloughs and reductions-in-force until other methods of achieving savings, such as reducing spending for travel, printing, supplies, and other services, prove insufficient.



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## SEQUESTRATION REDUCTIONS

A summary of the sequestration of budgetary resources and the estimated outlay savings for 1988 is provided for national defense programs in Table 9 and for nondefense programs by function in Table 10. Table 11 provides a summary of the 1988 sequestration reductions by agency. Table 12 provides a comparison of baseline spending authority and outlays by function before and after the required reductions are applied. In most instances additional outlay savings would be gained in 1989 and later years as a result of the cancellation of 1988 budget authority. The 1989 savings have not been estimated for this report.

A detailed listing of the sequestration reductions by agency and budget account is provided as an appendix to this report.

Table 9.--Defense Program Sequestrations for 1988  
(in billions of dollars)

Function 050	Spending Authority a/	Estimated Outlays
Department of Defense-Military:		
Military personnel b/.....	---	---
Operation and maintenance.....	8.8	6.5
Procurement.....	13.5	1.9
Research, development, test, and evaluation.....	4.3	2.2
Military construction.....	0.9	0.1
Family housing.....	0.4	0.2
Other.....	0.1	*
Subtotal, DoD.....	27.9	10.9
Atomic energy defense activities.....	0.8	0.5
Other defense-related activities c/.....	0.1	*
Total.....	28.9	11.5

- a/ Includes \$23.9 billion in new budget authority for 1988 and \$5.0 billion in unobligated balances from budget authority provided in previous years.
- b/ Exempted from sequester by Presidential authority.
- c/ Includes the portions of Federal Emergency Management Agency budget accounts that are in function 050, but which are reduced at the same rate as nondefense programs.
- \* \$50 million or less.



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TABLE 10.--Nondefense Program Sequestrations for 1988 by Function  
(in billions of dollars)

Function	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
International affairs.....	1.8	0.5	1.0	1.0
General science, space and technology.....	1.1	---	---	0.6
Energy.....	0.5	0.1	0.2	0.3
Natural resources and environment.....	1.7	*	---	1.0
Agriculture b/.....	1.6	1.5	0.7	1.7
Commerce and housing credit.	0.4	0.2	22.6	0.4
Transportation.....	3.6	*	*	0.8
Community and regional development.....	0.5	0.1	*	0.1
Education, training, employ- ment, and social services..	2.7	*	---	0.9
Health.....	1.2	*	---	0.6
Medicare.....	1.4	---	---	1.4
Income security.....	1.5	*	---	0.7
Social security.....	0.2	---	---	0.2
Veterans benefits and services.....	0.5	*	3.0	0.4
Administration of justice...	0.8	---	---	0.6
General government.....	0.7	---	---	0.6
General purpose fiscal assistance.....	0.1	---	---	0.1
Total.....	20.1	2.5	27.5	11.4

a/ Includes new budget authority, obligation limitations, and other spending authority for 1988.

b/ Includes \$0.6 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).

\* \$50 million or less.



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Table 11.--Sequestrations for 1988 by Agency  
(in billions of dollars)

Department or Other Unit	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
Legislative Branch.....	0.2	---	---	0.1
The Judiciary.....	0.1	---	---	0.1
Executive Office of the President.....	*	---	---	*
Funds appropriated to the President.....	1.2	0.4	---	0.6
Agriculture b/.....	2.4	1.9	0.9	2.3
Commerce.....	0.2	---	*	0.1
Defense-Military.....	27.9	---	---	10.9
Defense-Civil.....	0.3	---	---	0.2
Education.....	1.4	*	---	0.3
Energy.....	1.3	---	---	0.8
Health and Human Services, except Social Security.....	3.3	*	---	2.6
Health and Human Services, Social Security.....	0.2	---	---	0.2
Housing and Urban Development.....	1.2	0.1	22.2	0.2
Interior.....	0.6	*	*	0.4
Justice.....	0.5	---	---	0.3
Labor.....	0.7	---	---	0.3
State.....	0.3	*	---	0.2
Transportation.....	3.5	*	*	0.8
Treasury.....	0.6	---	---	0.5
Environmental Protection Agency.....	0.5	*	---	0.1
General Services Administration.....	0.1	---	---	*
National Aeronautics and Space Administration.....	1.0	---	---	0.6
Office of Personnel Management.....	0.2	---	---	*
Small Business Administration.....	*	*	0.4	*
Veterans Administration.....	0.5	*	3.0	0.4
Other independent agencies..	0.8	0.1	1.0	0.6
Total.....	48.9	2.5	27.5	22.9

a/ Includes new budget authority for 1988 (except for expiring authority), unobligated balances from budget authority provided in previous years (Defense-Military and other function 050 programs), obligation limitations and other spending authority for 1988.

b/ Includes \$0.6 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).

\* \$50 million or less.



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Table 12.--Pre- and Post-Sequester Estimates for 1988 by Function  
(in billions of dollars)

Function	October Baseline	Sequestrations	Post-Sequester Levels
National defense			
Budget Authority.....	302.8	-23.9	278.9
Outlays.....	289.6	-11.5	278.1
International affairs			
Budget Authority.....	16.6	-1.6	15.1
Outlays.....	16.7	-1.0	15.5
General science, space and technology			
Budget Authority.....	13.1	-1.1	12.0
Outlays.....	12.0	-0.6	11.4
Energy			
Budget Authority.....	3.4	-0.4	3.0
Outlays.....	3.7	-0.3	3.4
Natural resources and environment			
Budget Authority.....	16.0	-1.5	14.5
Outlays.....	15.6	-1.0	14.5
Agriculture			
Budget Authority.....	28.4	-1.0 a/	27.5
Outlays.....	27.7	-1.1 a/	26.6
Commerce and housing credit			
Budget Authority.....	9.8	-0.3	9.5
Outlays.....	6.6	-0.4	6.2
Transportation			
Budget Authority.....	27.7	-2.3	25.3
Outlays.....	28.3	-0.8	27.5
Community and regional development			
Budget Authority.....	7.2	-0.5	6.7
Outlays.....	6.5	-0.1	6.3
Education, training, employment, and social services			
Budget Authority.....	34.5	-2.6	31.9
Outlays.....	33.1	-0.9	32.2
Health			
Budget Authority.....	44.3	-1.1	43.1
Outlays.....	44.0	-0.6	43.5
Medicare			
Budget Authority.....	94.4	-1.2	93.2
Outlays.....	80.3	-1.4	79.0



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Table 12.--Pre- and Post-Sequester Estimates for 1988 by Function (cont.)  
(in billions of dollars)

Function	October Baseline	Sequestrations	Post-Sequester Levels
Income security			
Budget Authority.....	168.7	-1.3	167.4
Outlays.....	129.9	-0.7	129.2
Social security			
Budget Authority.....	256.3	---	256.3
Outlays.....	220.2	-0.2	220.0
Veterans' benefits and services			
Budget Authority.....	28.6	-0.5	28.2
Outlays.....	28.3	-0.4	28.0
Administration of justice			
Budget Authority.....	9.4	-0.8	8.6
Outlays.....	9.0	-0.6	8.4
General government			
Budget Authority.....	7.5	-0.7	6.9
Outlays.....	7.3	-0.6	6.7
General purpose fiscal assistance			
Budget Authority.....	1.9	-0.1	1.8
Outlays.....	1.9	-0.1	1.8
Net interest			
Budget Authority.....	145.9	-0.9 b/	145.0 b/
Outlays.....	145.9	-0.9 b/	145.0 b/
Allowances			
Budget Authority.....	---	---	---
Outlays.....	---	---	---
Undistributed offsetting receipts			
Budget Authority.....	-40.6	---	-40.6
Outlays.....	-40.6	---	-40.6
Total			
Budget Authority.....	1,176.1	-41.7	1,134.4
Outlays.....	1,066.0	-23.2	1,042.8

a/ Excludes \$0.6 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rules for CCC).

b/ Sequestrations and post-sequester levels include \$0.9 billion in debt service reduction resulting from the outlay reduction under the sequester.



## COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES

The revised Act requires that this report identify and explain any differences between the estimates contained in this report and corresponding amounts in the report of the Director of CBO with respect to:

- The aggregate amount of required outlay reductions;
- The aggregate amount of resources to be sequestered from defense accounts and from nondefense accounts, by type of sequesterable resource; and
- The amount of resources for any budget account that is to be reduced, if such difference is greater than \$5 million.

The Act further requires that this report provide, by type of sequesterable resource for defense programs and for nondefense programs, the amount of reductions in budgetary resources that would be required if such estimates were made using the aggregate amount of required outlay reductions figure from this report, but with the technical assumptions and methodologies used in the report by the Director of CBO.

Because both OMB and CBO estimate the aggregate amount of required outlay reductions to be \$23.0 billion, there is no difference with respect to this figure. Therefore, the detailed calculations of reductions in budgetary resources for defense and nondefense programs presented in the CBO report are the same figures that would result from a \$23 billion OMB sequester calculation that used CBO technical assumptions. Table 13 reproduces these figures from CBO's report.



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Table 13.--Budgetary Resource Reductions  
Using CBO Technical Assumptions  
(in billions of dollars)

	<u>Sequester Amount</u>
National Defense <sup>a/</sup> :	
Budget Authority.....	23.7
401C Authority.....	*
Unobligated Balances.....	5.0
Nondefense:	
Budget Authority.....	12.6
Budget Authority -- Special rules.....	0.2
401C authority.....	3.7
401C authority -- use of offsetting collections.....	0.2
401C authority -- special rules.....	1.5
Other 401C authority (including obligation limitations).....	1.3
Obligation limitation.....	1.0
Direct loan limitation.....	2.5
Direct loan floor.....	0.1
Loan guarantee limitation.....	26.9
Guaranteed loan floor.....	0.1

MEMORANDUM: Aggregate Outlay Reductions Required -- \$23.0 billion

<sup>a/</sup> Includes the portions of Federal Emergency Management Agency accounts that are in function 050, but which are reduced at the same rate as nondefense programs.

\* \$50 million or less.

Source: Congressional Budget Office.

As shown in Table 14, CBO and OMB differ by \$16.3 billion in their estimates of the baseline deficit for 1988. All but one of the major conceptual differences discussed in the joint OMB-CBO report of August 20th have been eliminated as a result of the revised Act. The remaining difference -- proper budgetary treatment of the Federal Employees Thrift Savings Fund -- was discussed in the joint report and will be addressed by OMB in its preparation of the 1989 budget submission.



Table 14.--Differences Between OMB and CBO Baseline Deficits  
(in billions of dollars)

OMB deficit.....	163.0
Differences:	
Conceptual: Federal Employees Thrift Savings Fund (FERS).....	3.3
Economic:	
Receipts.....	8.2
Outlays (excluding debt service).....	<u>5.3</u>
Subtotal, economic.....	<u>13.5</u>
Technical:	
Medicare.....	2.0
Other outlays.....	-0.6
Receipts.....	<u>-2.2</u>
Subtotal, technical.....	<u>-0.9</u>
Debt service.....	<u>0.4</u>
Total differences.....	<u>16.3</u>
CBO deficit.....	179.3

Most of the difference between OMB and CBO baseline deficit estimates, \$13.5 billion, is due to different economic assumptions. The amount of this difference remains unchanged from the August report. The remaining differences, other than debt service (interest), net to \$-0.9 billion. Technical differences on baseline receipts (\$2.2 billion) are offset by other technical differences in outlay estimates for medicare (\$2.0 billion). Technical differences in all other programs total \$-0.6 billion. Differences in debt service estimates due to the different deficit estimates account for the remaining \$0.4 billion.

For most accounts CBO and OMB figures agree or are close to each other on the levels of budgetary resources and outlays subject to sequester. There are some exceptions, though minor, that result in calculated sequestration percentages for both defense and nondefense programs that differ by tenths of a percentage point.

CBO assumes slightly faster spend-out of budget authority for defense programs, resulting in a calculated defense sequestration percentage of 10.4 percent. OMB's figure is 10.5 percent. There are also differences in OMB and CBO estimates relating to nondefense program outlays. These result in a CBO sequestration percentage of 8.7 percent for nondefense programs, compared to an OMB figure of 8.5 percent.



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There are three main differences in OMB's and CBO's estimates of sequesterable nondefense outlays. The first concerns the sequestration of the administrative expenses of the Postal Service. Both CBO and OMB agree that more than \$1 billion of budgetary resources are sequesterable. CBO believes that there is no evidence that the Postal Service took any steps to reduce spending in response to the President's sequestration order of March 1986 (as reaffirmed by Public Law 99-366). Moreover, the Administration appears to have no mechanism for enforcing a sequestration order with regard to the Postal Service, because the statute that established the United States Postal Service removed it from budgetary control by the President. CBO assumes that, as in 1986, a 1988 sequester order would not cause the Postal Service to make any actual spending reductions. CBO therefore shows no outlay savings resulting from the sequestration of budgetary resources for the Postal Service. CBO and OMB agree that the Postal Service is covered by the Act and should be held accountable to comply with the Act to reduce its outlays, consistent with the across-the-board percentage sequestration applied to the functions and programs of the executive, legislative, and judicial branches. Despite the fact that the Postal Service's budgetary resources are not subject to the OMB apportionment process, and despite questions concerning the amount of savings actually achieved in 1986, OMB believes that the executive and legislative branches would be able to influence the Postal Service to reduce its expenditures by the same percentage applied to other government agencies, as required by law. Thus, OMB's estimates include a sequester of \$98 million in outlays.

A similar situation exists with respect to budgetary resources and outlays for the Corporation for Public Broadcasting. Again, CBO and OMB agree that the Federal payment to the Corporation for Public Broadcasting is covered by the Act. Moreover, both CBO and OMB included as sequesterable \$214 million in budgetary resources and outlays in the Joint OMB/CBO Sequestration Report of August 20, 1987. CBO's October 15, 1987 report, however, excluded both budgetary resources and outlays because the entire \$214 million payment was made on October 1, 1987. Despite this, OMB believes that the executive and legislative branches would be able to influence the Corporation to comply with the Act by returning to the Federal Government an amount equal to the final sequestration percentage times the Federal payment. Thus, OMB's estimates include a sequester of \$18.4 million in budgetary resources and outlays, where CBO assumes none for either.

Second, as a result of technical error, the OMB outlay baseline for the foreign military sales credit program was \$0.8 billion too high in the August 20th report. Absent this error, the OMB and CBO figures for foreign military sales credit sequesterable outlays would only differ by \$0.3 billion. Although OMB would prefer to show corrected estimates for this and other smaller spendout rate errors in this and the final sequestration reports, section 251(a)(2)(c)(iii) of the Balanced Budget and Emergency Deficit Control Act, as amended, precludes it from doing so.

Third, many other differences between the two agencies' outlay figures, most of them quite minor, result from slightly different assumptions about the rates at which budget authority for various programs will be spent out as outlays. The largest difference in this category relates to the National Aeronautics and Space Administration spendout rate for budgetary resources for a new space shuttle. The difference is due to the fact that OMB and CBO made different



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assumptions about how to estimate outlays for the space shuttle in their current baselines. OMB assumed outlays would occur throughout the year; CBO assumed continuation of the provision enacted last year that allowed for only one month of obligations.

Table 15 identifies differences between OMB and CBO estimates of the aggregate amount of resources to be sequestered -- by type of resource for defense and nondefense programs. The largest difference by far is for estimates of guaranteed loan limitations. OMB has been informed that much of this difference will disappear when CBO revises its estimates in its November report. Most of the remaining differences in this category are due to different assumptions about the demand for guaranteed loans. Differences in the other types of sequesterable resources are largely technical estimating differences of resources for mandatory programs and classification differences that net to small differences between estimates of the sequesterable base.

Explanations of the differences for accounts where the OMB estimate differs by \$5 million or more from the CBO estimate can be found in Table 16. An appendix showing the base and sequestration reductions by agency and budget account for sequesterable accounts concludes the report.



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Table 15.--Differences Between OMB and CBO by Resource Type  
(in millions of dollars)

## DEFENSE:

## Budget authority subject to across-the-board reductions:

CBO estimate.....	227,562
Total, difference.....	92

OMB estimate.....	227,654
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## 401(c) authority subject to across-the-board reductions:

CBO estimate.....	221
Military construction, Army.....	-221

OMB estimate.....	0
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## Unobligated balances -- defense:

CBO estimate.....	47,673
Atomic energy defense activities.....	-455

OMB estimate.....	47,218
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## NON-DEFENSE:

## Budget authority subject to across-the-board reductions:

CBO estimate.....	145,411
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## Differences:

Conservation reserve program.....	111
Family social services 1/.....	-253
Advances to the hazardous substance superfund.....	148
Other.....	65

Total, difference.....	71
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OMB estimate.....	145,482
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## Budget authority subject to special rules:

CBO estimate.....	216
Total, difference.....	1

OMB estimate.....	217
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## 401(c) authority subject to across-the-board reductions:

CBO estimate.....	42,732
Family social services 1/.....	244
Commodity Credit Corporation.....	-331
Public broadcasting fund.....	214
Supplemental annuity pension fund.....	119
Other.....	47

Total, difference.....	293
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Table 15.--Differences Between OMB and CBO by Resource Type (cont.)  
(in millions of dollars)

OMB estimate.....	43,025
<u>401(c) authority-offsetting collections:</u>	
CBO estimate.....	2,552
Total, difference.....	-17
OMB estimate.....	2,535
<u>401(c) other -- including obligation limitation:</u>	
CBO estimate.....	15,282
Interim assistance to States for legalization.....	179
Federal hospital insurance and supplementary medical	
insurance trust funds 1/.....	-416
Other.....	89
Total, difference.....	-148
OMB estimate.....	15,134
<u>401(c) authority, automatic spending increases:</u>	
CBO and OMB estimate.....	4
<u>401(c) authority subject to special rules:</u>	
CBO estimate.....	1,442
Federal hospital insurance and supplementary medical	
insurance trust funds 1/.....	-170
Other.....	-4
Total difference.....	-174
OMB estimate.....	1,268
<u>Direct loan limitation:</u>	
CBO estimate.....	28,985
Total, difference.....	-37
OMB estimate.....	28,948
<u>Direct loan floor:</u>	
CBO and OMB estimate.....	1,082
<u>Guaranteed loan limitation:</u>	
CBO estimate.....	309,623
FHA fund.....	4,200
Guarantees of mortgage backed securities.....	6,300
Business loan and investment fund.....	157
Loan guaranty revolving fund.....	3,378
Other.....	80
Total, difference.....	14,115



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Table 15.--Differences Between OMB and CBO by Resource Type (cont.)  
(in millions of dollars)

OMB estimate.....	323,738
Direct loan floor:	
CBO and OMB estimate.....	972
Obligation limitation:	
CBO estimate.....	11,503
Federal hospital insurance and supplementary medical insurance trust funds <sup>1/</sup> .....	328
Federal old-age and survivors insurance and disability insurance trust funds.....	-111
Unemployment trust fund.....	631
Other.....	17
Total, difference.....	631
OMB estimate.....	12,368

<sup>1/</sup> All or most of the difference is the result of different  
classification by resource type.



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TABLE 16. -- Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than \$5 Million (in thousands of dollars)

Account Title	OMB Base	CBO Base	Difference	Explanation
Department of Agriculture				
Agricultural Research Service		(05-18-1401	-X-1-352-A;	12-1401)
Buildings and facilities		32,510	-31,468	1
Budget Authority	1,042			
Cooperative State Research Service		(05-24-1500	-X-1-352-A;	12-1500)
Cooperative State Research Service		317,200	75,734	1
Budget Authority	392,934	9,170	-6,370	1
401(C) Authority	2,800			
Foreign Assistance Programs		(05-57-2274	-X-1-151-A;	12-2274)
Expenses, PL 480, foreign assistance programs, Agricul		1,102,120	26,440	2
Budget Authority	1,128,560	853,606	9,899	3
Direct Loan Limitation	863,505			
Agricultural Stabilization & Conservation Service		(05-60-3319	-X-1-302-A;	12-3319)
Conservation reserve program		560,700	111,390	4
Budget Authority	672,090			
Commodity Credit Corporation		(05-66-4336	-X-3-351-A;	12-4336)
Commodity Credit Corporation Fund		7,490,000	-326,578	5
1989 401(C) Authority	7,163,422			
Agricultural Marketing Service		(05-81-5209	-X-2-605-A;	12-5209)
Funds for strengthening markets, income, and supply (s		390,000	-28,012	5
401(C) Authority	361,988			
Food and Nutrition Service		(05-84-3505	-X-1-605-A;	12-3505)
Food stamp program	0	61,647	-61,647	5,6
Budget Authority	55,762	0	55,762	5,6
401(C) Authority				
Forest Service		(05-96-9921	-X-2-852-A;	12-9921)
Forest Service permanent appropriations		260,787	35,358	5
401(C) Other--incl. ob. limit	296,145			
Department of Defense--Military				
Operation and Maintenance		(07-10-1804	-X-1-051-A;	17-1804)
Operation and maintenance, Navy		24,615,048	31,122	7
Budget Authority	24,646,170	(07-10-2020	-X-1-051-A;	21-2020)
Operation and maintenance, Army		21,621,360	25,596	7
Budget Authority	21,646,956	(07-10-3400	-X-1-051-A;	57-3400)
Operation and maintenance, Air Force		19,904,586	17,753	7
Budget Authority	19,922,339			
Military Construction		(07-25-2050	-X-1-051-A;	21-2050)
Military construction, Army		221,000	-221,000	8
401(C) Authority	0			
Department of Defense--Civil				
Corps of Engineers--Civil		(08-10-3123	-X-1-301-A;	96-3123)
Operation and maintenance, general		1,316,335	-8,055	2,9
Budget Authority	1,308,280	(08-10-8862	-X-7-301-A;	96-8862)
Rivers and harbors contributed funds		209,780	27,220	9
401(C) Other--incl. ob. limit	237,000			
Department of Energy				
Atomic Energy Defense Activities		(19-10-0220	-X-1-053-A;	89-0220)
Atomic energy defense activities		500,000	-455,000	10
Unobligated Balances--Defense	45,000			
Department of Health and Human Services				
Health Resources and Services		(09-15-0390	-X-1-551-A;	75-0390)
Indian health services		69,495	-5,770	11
Budget Authority	63,725			
Health Care Financing Administration		(09-38-8004	-X-7-571-A;	20-8004)
Federal supplementary medical insurance trust fund		72,627	-72,627	12,13
401(C) Other--incl. ob. limit	0	1,021,300	31,789	5
Obligation Limitation	1,053,089	(09-38-8004	-X-7-571-S;	20-8004)
FSMI 2% split (G-R-H)		410,000	-95,000	12,13
401(C) Authority--Spec. Rules	315,000	(09-38-8005	-X-7-571-A;	20-8005)
Federal hospital insurance trust fund		343,276	-343,276	12,13
401(C) Other--incl. ob. limit	0	842,845	296,083	5
Obligation Limitation	1,138,928	(09-38-8005	-X-7-571-S;	20-8005)
FHI 2% split (G-R-H)		980,000	-75,000	12,13
401(C) Authority--Spec. Rules	905,000			
Social Security Administration		(09-60-0406	-X-1-609-A;	75-0406)
Supplemental security income program		823,283	72,037	5
401(C) Authority	895,320			
Family Support Administration		(09-70-1508	-X-1-506-A;	75-1508)
Interim assistance to States for legalization		121,000	179,000	5
401(C) Other--incl. ob. limit	300,000			
Human Development Services		(09-80-1645	-X-1-506-A;	75-1645)
Family social services		252,855	-252,855	5,6
Budget Authority	0	45,000	244,127	5,6
401(C) Authority	289,127			



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TABLE 16. -- Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than \$5 Million (in thousands of dollars)

Account Title	OMB Base	CBO Base	Difference	Explanation
<b>Health and Human Services - Social Security</b>				
<b>Social Security</b>				
Federal old-age and survivors insurance trust fund		(16-05-8006	-X-7-651-A;	20-8006)
Obligation Limitation	1,678,544	1,799,944	-121,400	11
Federal disability insurance trust fund		(16-05-8007	-X-7-651-A;	20-8007)
Obligation Limitation	546,377	536,398	9,979	11
<b>Department of Housing and Urban Development</b>				
<b>Housing Programs</b>				
Rental housing assistance fund		(25-02-4041	-X-3-604-A;	86-4041)
401(C) Authority--Off. Coll.	60,000	51,000	9,000	9
Federal Housing Administration fund		(25-02-4070	-X-3-371-A;	86-4070)
401(C) Authority--Off. Coll.	360,616	382,896	-22,280	9
Guaranteed Loan Limitation	104,200,000	100,000,000	4,200,000	1
Obligation Limitation	334,555	306,962	27,593	2
<b>Government National Mortgage Association</b>				
Guarantees of mortgage-backed securities		(25-04-4238	-X-3-371-A;	86-4238)
401(C) Authority--Off. Coll.	39,084	18,785	20,299	9
Guaranteed Loan Limitation	156,300,000	150,000,000	6,300,000	1
<b>Community Planning and Development</b>				
Rehabilitation loan fund		(25-06-4036	-X-3-451-A;	86-4036)
Direct Loan Limitation	88,570	80,000	8,570	1
<b>Management and Administration</b>				
Salaries & expenses, incl. transfer of funds (Public a		(25-35-0143	-X-1-604-A;	86-0143)
Budget Authority	171,786	157,616	14,170	2
<b>Department of the Interior</b>				
<b>Bureau of Reclamation</b>				
Reclamation trust funds		(10-10-8070	-X-7-301-A;	14-8070)
401(C) Other--incl. ob. limit	48,000	32,085	15,915	9
<b>National Park Service</b>				
Operation of the national park system		(10-24-1036	-X-1-303-A;	14-1036)
Budget Authority	749,559	758,567	-9,008	1
<b>Bureau of Indian Affairs</b>				
Operation of Indian programs (Elementary, secondary, &		(10-76-2100	-X-1-501-A;	14-2100)
Budget Authority	289,699	295,661	-5,962	7
Miscellaneous permanent appropriations (Area and regio		(10-76-9925	-X-2-452-A;	14-9925)
401(C) Other--incl. ob. limit	47,001	64,000	-16,999	5
<b>Office of Territorial Affairs</b>				
Administration of territories		(10-82-0412	-X-1-806-A;	14-0412)
Budget Authority	45,777	81,637	-35,860	1
Compact of free association		(10-82-0415	-X-1-806-A;	14-0415)
401(C) Authority	0	27,920	-27,920	15
<b>Department of Justice</b>				
<b>Legal Activities</b>				
Assets forfeiture fund		(11-05-5042	-X-2-752-A;	15-5042)
Budget Authority	133,376	116,828	16,548	9
<b>Office of Justice Programs</b>				
Crime Victims Fund		(11-21-5041	-X-2-754-A;	15-5041)
401(C) Other--incl. ob. limit	80,000	70,000	10,000	9
<b>Department of Labor</b>				
<b>Employment and Training Administration</b>				
Federal unemployment benefits and allowances		(12-05-0326	-X-1-603-A;	16-0326)
401(C) Authority	159,000	137,000	22,000	5
Unemployment trust fund (Training and employment)		(12-05-8042	-X-7-504-A;	20-8042)
Obligation Limitation	991,692	361,157	630,535	1
<b>Employment Standards Administration</b>				
Black lung disability trust fund		(12-15-8144	-X-7-601-A;	20-8144)
Budget Authority	53,678	0	53,678	5,15
401(C) Authority	0	49,809	-49,809	5,15
<b>Department of Transportation</b>				
<b>National Highway Traffic Safety Administration</b>				
State and community highway safety grants		(21-10-8020	-X-7-401-A;	69-8020)
401(C) Other--incl. ob. limit	142,150	126,000	16,150	16
Obligation Limitation	0	16,828	-16,828	16
<b>Coast Guard</b>				
Boat safety		(21-30-8149	-X-7-403-A;	69-8149)
Budget Authority	46,890	15,630	31,260	15
401(C) Authority	0	15,973	-15,973	15
<b>Maritime Administration</b>				
Federal ship financing fund		(21-35-4301	-X-3-403-A;	69-4301)
Guaranteed Loan Limitation	72,940	0	72,940	17
<b>Department of the Treasury</b>				
<b>United States Customs Service</b>				
Salaries and expenses		(15-15-0602	-X-1-751-A;	20-0602)
401(C) Authority	79,400	72,950	6,450	5



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TABLE 16. -- Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than \$5 Million (in thousands of dollars)

Account Title	OMB Base	CBO Base	Difference	Explanation
Bureau of Engraving and Printing				
Bureau of Engraving and Printing fund		(15-20-4502	-X-4-803-A; 20-4502)	
401(C) Authority--Off. Coll.	11,086	36,491	-25,405	9
Environmental Protection Agency				
Environmental Protection Agency				
Advances to the hazardous substance superfund		(20-00-0250	-X-1-304-A; 68-0250)	
Budget Authority	148,500	0	148,500	1
National Aeronautics and Space Administration				
National Aeronautics and Space Administration				
Research and development (Space flight)		(26-00-0108	-X-1-253-A; 80-0108)	
Budget Authority	962,391	953,951	8,440	7
Small Business Administration				
Small Business Administration				
Disaster loan fund		(28-00-4153	-X-3-453-A; 73-4153)	
Direct Loan Limitation	312,600	364,000	-51,400	18
Business loan and investment fund		(28-00-4154	-X-3-376-A; 73-4154)	
Guaranteed Loan Limitation	3,898,122	3,741,000	157,122	19
Veterans Administration				
Veterans Administration				
Readjustment benefits		(29-00-0137	-X-1-702-A; 36-0137)	
401(C) Authority	597,132	587,432	9,700	5
Burial benefits and miscellaneous assistance		(29-00-0155	-X-1-701-A; 36-0155)	
401(C) Authority	128,476	121,400	7,076	5
Medical care		(29-00-0160	-X-1-703-A; 36-0160)	
Budget Authority	779,751	805,143	-25,392	11
Loan guaranty revolving fund		(29-00-4025	-X-3-704-A; 36-4025)	
Guaranteed Loan Limitation	35,000,000	31,622,000	3,378,000	17
Other Independent Agencies				
Corporation for Public Broadcasting				
Public broadcasting fund		(30-42-0151	-X-1-503-A; 20-0151)	
401(C) Authority	214,000	0	214,000	20
Railroad Retirement Board				
Supplemental Annuity Pension Fund		(32-20-8012	-X-7-601-A; 60-8012)	
401(C) Authority	119,000	0	119,000	21
United States Information Agency				
Radio construction		(33-22-0204	-X-1-154-A; 67-0204)	
Budget Authority	68,780	47,938	20,842	22

- 1/ CBO has indicated that it will revise this account in its November report.
- 2/ Different application of inflation factor.
- 3/ Different assumptions on commodity prices.
- 4/ Technical estimating difference for market prices that determine the level of program cost-share payments.
- 5/ Technical estimating difference for mandatory programs.
- 6/ OMB classifies the entire account, cited as such in the law, as 401(C) authority; CBO classifies part or all of the account as budget authority.
- 7/ Different assumptions on payroll base for civilian pay raise.
- 8/ Different treatment of advance appropriations.
- 9/ Technical estimating difference for offsetting collections or use of offsetting collections.
- 10/ Technical estimating difference for unobligated balances.
- 11/ Technical estimating difference for administrative costs.
- 12/ The revised Act specifies that OMB and CBO follow different procedures in estimating the Medicare baseline.
- 13/ OMB classifies entire amount as obligation limitation; CBO classifies all or part as 401(C) other.
- 14/ OMB classifies as discretionary budget authority; CBO classifies as entitlement.
- 15/ OMB classifies as budget authority; CBO classifies as 401(C) authority.
- 16/ OMB classifies as 401(C) other; CBO classifies all or part as obligation limitation.
- 17/ Technical estimating difference for demand for guaranteed loans.
- 18/ Technical estimating difference for demand for direct loans.
- 19/ Difference due to change in CBO technical assumptions since August relating to SBA guarantee percentage of full principal amount of loans.
- 20/ OMB classifies as sequesterable; CBO as exempt. See text for explanation.
- 21/ OMB classifies as sequesterable; CBO as exempt. Congress did not explicitly exempt this account. Supplemental annuities were not sequestered in previous fiscal years because the supplemental annuity account had been merged with the Rail Industry Pension Fund for presentation purposes.
- 22/ Difference in scoring of current indefinite appropriation.



## APPENDIX: SEQUESTRATION REDUCTIONS BY

## AGENCY AND BUDGET ACCOUNT

(fiscal year 1988; in thousands of dollars)

Percentages Used: Non-Defense, 8.5%; Defense, 10.5%



Account Title		Base	Sequester
<b>Legislative Branch</b>			
<b>Senate</b>			
Mileage of the Vice President and Senators	(01-05-0101	-X-1-801-A;	00-0101)
Budget Authority		62	5
Outlays		62	5
Expense allowances of the Vice President, Pres Pro Tem	(01-05-0107	-X-1-801-A;	00-0107)
Budget Authority		58	5
Outlays		58	5
Representation allowances for the Majority and Minority	(01-05-0108	-X-1-801-A;	00-0108)
Budget Authority		21	2
Outlays		21	2
Salaries, officers and employees	(01-05-0110	-X-1-801-A;	00-0110)
Budget Authority		196,563	16,708
Outlays		196,563	16,708
Miscellaneous items	(01-05-0123	-X-1-801-A;	00-0123)
Budget Authority		12,102	1,029
Outlays		12,102	1,029
Secretary of the Senate	(01-05-0126	-X-1-801-A;	00-0126)
Budget Authority		697	59
Outlays		697	59
Sergeant at Arms and Doorkeeper of the Senate	(01-05-0127	-X-1-801-A;	00-0127)
Budget Authority		67,334	5,723
Outlays		67,334	5,723
Inquiries and investigations	(01-05-0128	-X-1-801-A;	00-0128)
Budget Authority		57,760	4,910
Outlays		57,760	4,910
Expenses of U.S. International Narcotics Control Commi	(01-05-0129	-X-1-801-A;	00-0129)
Budget Authority		360	31
Outlays		360	31
Stationery (revolving fund)	(01-05-0140	-X-1-801-A;	00-0140)
Budget Authority		13	1
Outlays		13	1
Office of Senate Legal Counsel	(01-05-0171	-X-1-801-A;	00-0171)
Budget Authority		637	54
Outlays		637	54
Expense allowance for the Secretary of the Senate, etc	(01-05-0172	-X-1-801-A;	00-0172)
Budget Authority		12	1
Outlays		12	1
Senate policy committees	(01-05-0182	-X-1-801-A;	00-0182)
Budget Authority		2,156	183
Outlays		2,156	183
Office of the Legislative Counsel of the Senate	(01-05-0185	-X-1-801-A;	00-0185)
Budget Authority		1,617	137
Outlays		1,617	137
<b>House of Representatives</b>			
Mileage of Members	(01-10-0208	-X-1-801-A;	00-0208)
Budget Authority		219	19
Outlays		219	19
House leadership offices	(01-10-0408	-X-1-801-A;	00-0408)
Budget Authority		3,709	315
Outlays		3,709	315
Salaries, officers and employees	(01-10-0410	-X-1-801-A;	00-0410)
Budget Authority		56,985	4,844
Outlays		56,985	4,844
Members' clerk hire	(01-10-0415	-X-1-801-A;	00-0415)
Budget Authority		188,396	16,014
Outlays		188,396	16,014
Committee employees	(01-10-0416	-X-1-801-A;	00-0416)
Budget Authority		53,136	4,517
Outlays		53,136	4,517
Committee on Appropriations (Studies and Investigation	(01-10-0418	-X-1-801-A;	00-0418)
Budget Authority		4,629	393
Outlays		4,629	393
Committee on the Budget (Studies)	(01-10-0419	-X-1-801-A;	00-0419)
Budget Authority		343	29
Outlays		343	29
Special and select committees	(01-10-0433	-X-1-801-A;	00-0433)
Budget Authority		55,279	4,699
Outlays		55,279	4,699
Allowances and expenses	(01-10-0438	-X-1-801-A;	00-0438)
Budget Authority		157,750	13,409
Outlays		157,750	13,409
Congressional use of foreign currency, House of Repres	(01-10-0488	-X-1-801-A;	00-0488)
401(C) Authority		3,360	286
Outlays		3,360	286
Page residence hall and meal plan	(01-10-4011	-X-3-801-A;	00-4011)
Outlays		-126	-11



Account Title		Base	Sequester
<u>Joint Items</u>			
Capitol Guide Service	(01-12-0170)	-X-1-801-A; 00-0170)	
Budget Authority		1,095	93
Outlays		1,095	93
Joint Committee on Printing	(01-12-0180)	-X-1-801-A; 00-0180)	
Budget Authority		1,017	86
Outlays		1,017	86
Joint Economic Committee	(01-12-0181)	-X-1-801-A; 00-0181)	
Budget Authority		3,029	257
Outlays		3,029	257
Office of the Attending Physician	(01-12-0425)	-X-1-801-A; 00-0425)	
Budget Authority		1,352	115
Outlays		1,352	115
Joint Committee on Taxation	(01-12-0460)	-X-1-801-A; 00-0460)	
Budget Authority		4,555	387
Outlays		4,555	387
General expenses, Capitol police	(01-12-0476)	-X-1-801-A; 00-0476)	
Budget Authority		1,960	167
Outlays		1,960	167
Statements of appropriations, House of Representatives	(01-12-0499)	-X-1-801-A; 00-0499)	
Budget Authority		21	2
Official mail costs	(01-12-0825)	-X-1-801-A; 00-0825)	
Budget Authority		95,263	8,097
Outlays		95,263	8,097
<u>Congressional Budget Office</u>			
Salaries and expenses	(01-14-0100)	-X-1-801-A; 08-0100)	
Budget Authority		18,698	1,589
Outlays		16,828	1,430
<u>Architect of the Capitol</u>			
Office of the Architect of the Capitol: Salaries	(01-15-0100)	-X-1-801-A; 01-0100)	
Budget Authority		5,825	495
Outlays		5,825	495
Contingent expenses	(01-15-0102)	-X-1-801-A; 01-0102)	
Budget Authority		52	4
Outlays		52	4
Capitol buildings	(01-15-0105)	-X-1-801-A; 01-0105)	
Budget Authority		12,834	1,091
Outlays		12,834	1,091
Capitol grounds	(01-15-0108)	-X-1-801-A; 01-0108)	
Budget Authority		3,436	292
Outlays		3,108	264
Senate office buildings	(01-15-0123)	-X-1-801-A; 01-0123)	
Budget Authority		27,171	2,310
Outlays		25,474	2,165
House office buildings	(01-15-0127)	-X-1-801-A; 01-0127)	
Budget Authority		27,370	2,326
Outlays		25,228	2,144
Capitol Power Plant	(01-15-0133)	-X-1-801-A; 01-0133)	
Budget Authority		25,794	2,192
401(C) Authority--Off. Coll.		123	10
Outlays		22,428	1,906
Structural and mechanical care, Library buildings and	(01-15-0155)	-X-1-801-A; 01-0155)	
Budget Authority		6,453	548
Outlays		6,453	548
<u>Library of Congress</u>			
Salaries and expenses	(01-25-0101)	-X-1-503-A; 03-0101)	
Budget Authority		144,409	12,275
401(C) Authority--Off. Coll.		4,828	410
Outlays		115,123	9,785
Copyright Office: Salaries and expenses	(01-25-0102)	-X-1-376-A; 03-0102)	
Budget Authority		10,867	924
401(C) Authority--Off. Coll.		6,992	594
Outlays		16,870	1,434
Congressional Research Service: Salaries and expenses	(01-25-0127)	-X-1-801-A; 03-0127)	
Budget Authority		43,554	3,702
Outlays		39,243	3,336
Books for the blind and physically handicapped: Salary	(01-25-0141)	-X-1-503-A; 03-0141)	
Budget Authority		37,793	3,212
Outlays		17,593	1,495
Collection & distribution of library materials (sp. fo	(01-25-0144)	-X-1-503-A; 03-0144)	
Budget Authority		410	35
Furniture and furnishings	(01-25-0146)	-X-1-503-A; 03-0146)	
Budget Authority		5,297	450
Outlays		1,325	113
Gift and trust fund accounts	(01-25-9971)	-X-7-503-A; 03-9971)	
401(C) Other--incl. ob. limit		346	29
<u>Government Printing Office</u>			
Office of Superintendent of Documents: Salaries and ex	(01-30-0201)	-X-1-806-A; 04-0201)	
Budget Authority		23,506	1,998
Outlays		16,779	1,426



Account Title		Base	Sequester
Printing and binding	(01-30-0202	-X-1-801-A;	04-0202)
Budget Authority		11,149	948
Congressional printing and binding	(01-30-0203	-X-1-801-A;	04-0203)
Budget Authority		64,604	5,491
Outlays		53,428	4,541
Government Printing Office revolving fund	(01-30-4505	-X-4-806-A;	04-4505)
401(C) Authority--Off. Coll.		29,000	2,465
Outlays		29,000	2,465
<u>General Accounting Office</u>			
Salaries and expenses	(01-35-0107	-X-1-801-A;	05-0107)
Budget Authority		332,697	28,279
Outlays		303,820	25,825
<u>United States Tax Court</u>			
Salaries and expenses	(01-40-0100	-X-1-752-A;	23-0100)
Budget Authority		27,501	2,338
Outlays		25,081	2,132
<u>Other Legislative Branch Agencies</u>			
Commission on Security & Cooperation in Europe: Salary	(01-45-0110	-X-1-801-A;	09-0110)
Budget Authority		574	49
Outlays		550	47
Botanic Garden: Salaries and expenses	(01-45-0200	-X-1-801-A;	09-0200)
Budget Authority		2,265	193
Outlays		2,034	173
Copyright Royalty Tribunal: Salaries and expenses	(01-45-0310	-X-1-376-A;	09-0310)
Budget Authority		134	11
Outlays		87	7
Biomedical Ethics: Salaries and expenses	(01-45-0400	-X-1-801-A;	09-0400)
Budget Authority		166	14
Outlays		166	14
Office of Technology Assessment: Salaries and expenses	(01-45-0700	-X-1-801-A;	09-0700)
Budget Authority		17,141	1,457
Outlays		13,602	1,156
Railroad Accounting Principles Board: Salaries and exp	(01-45-0800	-X-1-801-A;	09-0800)
Budget Authority		657	56
Dwight David Eisenhower Centennial Commission: Expense	(01-45-1700	-X-1-801-A;	76-1700)
Budget Authority		52	4
Outlays		50	4
Legislative Branch	Total		
Budget Authority		1,818,539	154,574
401(C) Authority		3,360	286
401(C) Authority--Off. Coll.		40,943	3,479
401(C) Other--incl. ob. limit		346	29
Outlays		1,724,324	146,564
<u>The Judiciary</u>			
<u>Supreme Court of the United States</u>			
Salaries and expenses	(02-05-0100	-X-1-752-A;	10-0100)
Budget Authority		14,782	1,256
Outlays		10,115	860
Care of the building and grounds	(02-05-0103	-X-1-752-A;	10-0103)
Budget Authority		2,428	206
Outlays		2,205	187
<u>United States Court of Appeals for Federal Circuit</u>			
Salaries and expenses	(02-07-0510	-X-1-752-A;	10-0510)
Budget Authority		6,099	518
Outlays		5,623	478
<u>United States Court of International Trade</u>			
Salaries and expenses	(02-15-0400	-X-1-752-A;	10-0400)
Budget Authority		6,662	566
Outlays		6,398	544
<u>Courts of Appeals, District Courts and other Svcs</u>			
Salaries and expenses	(02-25-0920	-X-1-752-A;	10-0200)
Budget Authority		963,897	81,931
Outlays		896,518	76,204
Defender services	(02-25-0923	-X-1-752-A;	10-0923)
Budget Authority		91,241	7,755
Outlays		47,020	3,997
Fees of jurors and commissioners	(02-25-0925	-X-1-752-A;	10-0925)
Budget Authority		56,459	4,799
Outlays		50,810	4,319
Court security	(02-25-0930	-X-1-752-A;	10-0930)
Budget Authority		37,545	3,191
Outlays		22,902	1,947
<u>Administrative Office of the United States Courts</u>			
Salaries and expenses	(02-26-0927	-X-1-752-A;	10-0927)
Budget Authority		32,226	2,739
Outlays		28,152	2,393
<u>Federal Judicial Center</u>			
Salaries and expenses	(02-30-0928	-X-1-752-A;	10-0928)
Budget Authority		11,348	965
Outlays		9,351	795



Account Title		Base	Sequester
<u>Bicentennial Expenses, The Judiciary</u>			
Bicentennial activities	(02-34-0933	-X-1-806-A;	10-0933)
Budget Authority		1,042	89
<u>The Judiciary</u>	Total		
Budget Authority		1,223,729	104,015
Outlays		1,079,094	91,724
<u>Executive Office of the President</u>			
<u>The White House Office</u>			
Salaries and expenses	(03-10-0110	-X-1-802-A;	11-0110)
Budget Authority		26,504	2,253
Outlays		23,344	1,984
<u>Executive Residence at the White House</u>			
Operating expenses	(03-20-0210	-X-1-802-A;	11-0210)
Budget Authority		5,140	437
401(C) Authority--Off. Coll.		729	62
Outlays		5,685	483
<u>Official Residence of the Vice President</u>			
Operating expenses	(03-21-0211	-X-1-802-A;	11-0211)
Budget Authority		222	19
Outlays		50	4
<u>Special Assistance to the President</u>			
Salaries and expenses	(03-22-1454	-X-1-802-A;	11-1454)
Budget Authority		1,937	165
Outlays		1,686	143
<u>Council of Economic Advisers</u>			
Salaries and expenses	(03-28-1900	-X-1-802-A;	11-1900)
Budget Authority		2,484	211
Outlays		2,164	184
<u>Council/Office on Environmental Quality</u>			
Council on Environmental Quality & Off. of Environment	(03-31-1453	-X-1-802-A;	11-1453)
Budget Authority		874	74
Outlays		829	70
<u>Office of Policy Development</u>			
Salaries and expenses	(03-35-2200	-X-1-802-A;	11-2200)
Budget Authority		2,838	241
Outlays		2,763	235
<u>National Security Council</u>			
Salaries and expenses	(03-40-2000	-X-1-802-A;	11-2000)
Budget Authority		4,946	420
Outlays		4,128	351
<u>National Critical Materials Council</u>			
Salaries and expenses	(03-41-0111	-X-1-802-A;	11-0111)
Budget Authority		190	16
Outlays		172	15
<u>Office of Administration</u>			
Salaries and expenses	(03-42-0038	-X-1-802-A;	11-0038)
Budget Authority		16,718	1,421
Outlays		11,957	1,016
<u>Office of Management and Budget</u>			
Office of Federal Procurement Policy: Salaries and exp	(03-48-0201	-X-1-802-A;	11-0201)
Budget Authority		1,739	148
Outlays		1,617	137
Salaries and expenses	(03-48-0300	-X-1-802-A;	11-0300)
Budget Authority		40,232	3,420
Outlays		37,062	3,150
<u>Office of Science and Technology Policy</u>			
Salaries and expenses	(03-49-2600	-X-1-802-A;	11-2600)
Budget Authority		2,048	174
Outlays		1,638	139
<u>Office of the United States Trade Representative</u>			
Salaries and expenses	(03-50-0400	-X-1-802-A;	11-0400)
Budget Authority		14,400	1,224
Outlays		12,830	1,091
<u>White House Conference on Drug Abuse and Control</u>			
Salaries and expenses	(03-55-0212	-X-1-551-A;	11-0212)
Budget Authority		5,328	453
Outlays		4,369	371
<u>Executive Office of the President</u>	Total		
Budget Authority		125,600	10,676
401(C) Authority--Off. Coll.		729	62
Outlays		110,294	9,373
<u>Funds Appropriated to the President</u>			
<u>Disaster Relief</u>			
Disaster relief	(04-03-0039	-X-1-453-A;	11-0039)
Budget Authority		125,040	10,628
Outlays		52,102	4,429
<u>Unanticipated Needs</u>			
Unanticipated needs	(04-06-0037	-X-1-802-A;	11-0037)
Budget Authority		1,053	90
Outlays		1,013	86



Account Title		Base	Sequester
<u>International Security Assistance</u>			
Peacekeeping operations	(04-09-1032	-X-1-152-A;	11-1032)
Budget Authority		33,020	2,807
Outlays		16,626	1,413
Economic support fund	(04-09-1037	-X-1-152-A;	11-1037)
Budget Authority		3,713,167	315,619
Direct Loan Limitation		182,955	15,551
Outlays		2,605,408	221,460
Military assistance	(04-09-1080	-X-1-152-A;	11-1080)
Budget Authority		991,135	84,246
Outlays		188,315	16,007
International military education and training	(04-09-1081	-X-1-152-A;	11-1081)
Budget Authority		58,352	4,960
Outlays		29,176	2,480
Foreign military sales credit	(04-09-1082	-X-1-152-A;	11-1082)
Budget Authority		4,223,685	359,013
Direct Loan Limitation		4,223,685	359,013
Outlays		3,065,830	260,596
<u>Multilateral Assistance</u>			
Contribution to the Inter-American Development Bank	(04-12-0072	-X-1-151-A;	11-0072)
Budget Authority		35,094	2,983
Contribution to the International Development Association	(04-12-0073	-X-1-151-A;	11-0073)
Budget Authority		864,964	73,522
Contribution to the Asian Development Bank	(04-12-0076	-X-1-151-A;	11-0076)
Budget Authority		109,034	9,268
Outlays		5,517	469
Contribution to the International Bank for Reconstruction and Development	(04-12-0077	-X-1-151-A;	11-0077)
Budget Authority		58,149	4,943
Outlays		5,815	494
Contribution to the International Finance Corporation	(04-12-0078	-X-1-151-A;	11-0078)
Budget Authority		7,509	638
Outlays		7,509	638
Contribution to the African Development Fund	(04-12-0079	-X-1-151-A;	11-0079)
Budget Authority		94,225	8,009
Contribution to the African Development Bank	(04-12-0082	-X-1-151-A;	11-0082)
Budget Authority		21,340	1,814
Outlays		21,340	1,814
Contribution to the special facility for Sub-Saharan Africa	(04-12-0086	-X-1-151-A;	11-0086)
Budget Authority		67,527	5,740
Outlays		22,284	1,894
International organizations and programs	(04-12-1005	-X-1-151-A;	11-1005)
Budget Authority		247,229	21,014
Outlays		157,305	13,371
<u>Agency for International Development</u>			
Operating expenses, Agency for International Development	(04-14-1000	-X-1-151-A;	11-1000)
Budget Authority		369,605	31,416
Outlays		277,204	23,562
Operating expenses of the AID Office of Inspector General	(04-14-1007	-X-1-151-A;	11-1007)
Budget Authority		22,612	1,922
Outlays		16,960	1,442
Sahel development program	(04-14-1012	-X-1-151-A;	11-1012)
Budget Authority		72,940	6,200
Outlays		5,835	496
American schools and hospitals abroad	(04-14-1013	-X-1-151-A;	11-1013)
Budget Authority		36,470	3,100
Outlays		9,847	837
Functional development assistance program	(04-14-1021	-X-1-151-A;	11-1021)
Budget Authority		1,535,378	130,507
Direct Loan Limitation		156,300	13,286
Outlays		139,585	11,865
International disaster assistance	(04-14-1035	-X-1-151-A;	11-1035)
Budget Authority		72,940	6,200
Outlays		18,089	1,538
Housing and other credit guaranty programs	(04-14-4340	-X-3-151-A;	72-4340)
401(C) Authority--Off. Coll.		6,500	552
Guaranteed Loan Limitation		151,573	12,884
Outlays		6,175	525
Private sector revolving fund	(04-14-4341	-X-3-151-A;	72-4341)
Budget Authority		13,546	1,151
Direct Loan Limitation		16,206	1,378
<u>Trade and Development Program</u>			
Trade and development program	(04-16-1001	-X-1-151-A;	11-1001)
Budget Authority		20,912	1,778
Outlays		2,614	222
<u>Peace Corps</u>			
Peace Corps operating expenses	(04-18-0100	-X-1-151-A;	11-0100)
Budget Authority		147,707	12,555
401(C) Authority--Off. Coll.		102	9
Outlays		119,745	10,178



Account Title		Base	Sequester
<u>Overseas Private Investment Corporation</u>			
Overseas Private Investment Corporation	(04-20-4030	-X-3-151-A;	71-4030)
401(C) Authority--Off. Coll.		10,600	901
Direct Loan Limitation		23,966	2,037
Guaranteed Loan Limitation		208,400	17,714
Outlays		12,706	1,080
<u>Inter-American Foundation</u>			
Inter-American Foundation	(04-22-4031	-X-3-151-A;	11-4031)
Budget Authority		12,384	1,053
401(C) Authority--Off. Coll.		14,888	1,265
Outlays		11,831	1,006
<u>African Development Foundation</u>			
African Development Foundation	(04-24-0700	-X-1-151-A;	11-0700)
Budget Authority		6,861	583
Outlays		2,606	222
<u>Military Sales Programs</u>			
Special defense acquisition fund	(04-37-4116	-X-3-155-A;	11-4116)
Obligation Limitation		329,084	27,972
Foreign military sales trust fund	(04-37-8242	-X-7-155-A;	11-8242)
401(C) Authority--Off. Coll.		340,000	28,900
Outlays		340,000	28,900
<u>Funds Appropriated to the President</u>	Total		
Budget Authority		12,961,878	1,101,759
401(C) Authority--Off. Coll.		372,090	31,627
Direct Loan Limitation		4,603,112	391,265
Guaranteed Loan Limitation		359,973	30,598
Obligation Limitation		329,084	27,972
Outlays		7,141,437	607,024
<u>Department of Agriculture</u>			
<u>Office of the Secretary</u>			
Office of the Secretary	(05-03-0115	-X-1-352-A;	12-0115)
Budget Authority		16,500	1,402
Outlays		13,968	1,187
<u>Departmental Administration</u>			
Rental payments and building operations	(05-05-0117	-X-1-352-A;	12-0117)
Budget Authority		69,723	5,926
Outlays		67,982	5,778
Advisory committees	(05-05-0118	-X-1-352-A;	12-0118)
Budget Authority		1,503	128
Outlays		1,390	118
Departmental administration	(05-05-0120	-X-1-352-A;	12-0120)
Budget Authority		23,253	1,976
Outlays		23,253	1,976
Working capital fund	(05-05-4609	-X-4-352-A;	12-4609)
Budget Authority		6,072	516
Outlays		6,072	516
<u>Office of Governmental and Public Affairs</u>			
Office of Governmental and Public Affairs	(05-06-0130	-X-1-352-A;	12-0130)
Budget Authority		8,915	758
Outlays		7,793	662
<u>Office of the Inspector General</u>			
Office of the Inspector General	(05-08-0900	-X-1-352-A;	12-0900)
Budget Authority		48,450	4,118
Outlays		42,811	3,639
<u>Office of the General Counsel</u>			
Office of the General Counsel	(05-10-2300	-X-1-352-A;	12-2300)
Budget Authority		18,833	1,601
Outlays		18,023	1,532
<u>Agricultural Research Service</u>			
Agricultural Research Service	(05-18-1400	-X-1-352-A;	12-1400)
Budget Authority		549,802	46,733
401(C) Authority--Off. Coll.		3,427	291
Outlays		444,870	37,814
Buildings and facilities	(05-18-1401	-X-1-352-A;	12-1401)
Budget Authority		1,042	89
<u>Cooperative State Research Service</u>			
Cooperative State Research Service	(05-24-1500	-X-1-352-A;	12-1500)
Budget Authority		392,934	33,399
401(C) Authority		2,800	238
Outlays		186,374	15,842
<u>Extension Service</u>			
Extension Service	(05-27-0502	-X-1-352-A;	12-0502)
Budget Authority		346,955	29,491
401(C) Authority--Off. Coll.		495	42
Outlays		291,588	24,785
<u>National Agricultural Library</u>			
National Agricultural Library	(05-30-0300	-X-1-352-A;	12-0300)
Budget Authority		11,775	1,001
Outlays		8,573	729



Account Title		Base	Sequester
<u>National Agricultural Statistics Service</u>			
Salaries and expenses	(05-33-1801	-X-1-352-A;	12-1801)
Budget Authority		61,298	5,210
401(C) Authority--Off. Coll.		1,075	91
Outlays		53,793	4,572
<u>Economic Research Service</u>			
Salaries and expenses	(05-36-1701	-X-1-352-A;	12-1701)
Budget Authority		47,844	4,075
Outlays		41,712	3,546
<u>World Agricultural Outlook Board</u>			
World agricultural outlook board	(05-50-2100	-X-1-352-A;	12-2100)
Budget Authority		1,757	149
Outlays		1,458	124
<u>Foreign Agricultural Service</u>			
Foreign Agricultural Service	(05-51-2900	-X-1-352-A;	12-2900)
Budget Authority		88,006	7,481
Outlays		48,403	4,114
<u>Office of International Cooperation &amp; Development</u>			
Scientific activities overseas	(05-53-1404	-X-1-352-A;	12-1404)
Budget Authority		2,607	222
Outlays		2,607	222
Salaries and expenses	(05-53-3200	-X-1-352-A;	12-3200)
Budget Authority		5,395	459
Outlays		5,395	459
<u>Foreign Assistance Programs</u>			
Expenses, PL 480, foreign assistance programs, Agricul	(05-57-2274	-X-1-151-A;	12-2274)
Budget Authority		1,128,560	95,928
Direct Loan Limitation		863,505	73,398
Obligation Limitation		1,524,520	129,584
Outlays		1,128,543	95,926
<u>Agricultural Stabilization &amp; Conservation Service</u>			
Salaries and expenses	(05-60-3300	-X-1-351-A;	12-3300)
401(C) Authority--Off. Coll.		18,235	1,550
Outlays		18,235	1,550
Dairy indemnity program	(05-60-3314	-X-1-351-A;	12-3314)
Budget Authority		675	57
Outlays		675	57
Agricultural conservation program	(05-60-3315	-X-1-302-A;	12-3315)
Budget Authority		184,366	15,671
Outlays		84,624	7,193
Emergency conservation program	(05-60-3316	-X-1-453-A;	12-3316)
Budget Authority		10,420	886
Outlays		7,815	664
Colorado river basin salinity control program	(05-60-3318	-X-1-304-A;	12-3318)
Budget Authority		3,964	337
Outlays		1,982	168
Conservation reserve program	(05-60-3319	-X-1-302-A;	12-3319)
Budget Authority		672,090	57,128
Outlays		672,090	57,128
Water Bank program	(05-60-3320	-X-1-302-A;	12-3320)
Budget Authority		8,723	741
Outlays		1,134	96
Forestry incentives program	(05-60-3336	-X-1-302-A;	12-3336)
Budget Authority		12,390	1,053
Outlays		4,337	369
<u>Federal Crop Insurance Corporation</u>			
Administrative and operating expenses	(05-63-2707	-X-1-351-A;	12-2707)
Budget Authority		220,141	18,712
Outlays		122,423	10,406
<u>Commodity Credit Corporation</u>			
Temp. stor. & distr. of CCC emgcy. food	(05-66-3635	-X-1-351-A;	12-3635)
Budget Authority		52,100	4,428
Outlays		37,075	3,151
Commodity Credit Corporation Fund	(05-66-4336	-X-3-351-A;	12-4336)
401(C) Authority		16,031,064	1,362,640
Direct Loan Limitation		15,500,000	1,317,500
Guaranteed Loan Limitation		5,500,000	467,500
Outlays		16,031,064	1,362,640
National Wool Act ASI (G-R-H)	(05-66-4336	-X-3-351-G;	12-4336)
401(C) Authority--ASI		4,100	4,100
Outlays		4,100	4,100
<u>Rural Electrification Administration</u>			
Salaries and expenses	(05-72-3100	-X-1-271-A;	12-3100)
Budget Authority		32,181	2,735
Outlays		30,572	2,599
Reimbursement to the Rural elec. & tel. revolv. fund f	(05-72-3101	-X-1-271-A;	12-3101)
Budget Authority		20,840	1,771



Account Title		Base	Sequester
Purchase of Rural Telephone Bank capital stock	(05-72-3102	-X-1-452-A;	12-3102)
Budget Authority		29,916	2,543
Outlays		29,916	2,543
Rural electrification and telephone revolving fund	(05-72-4230	-X-3-271-A;	12-4230)
Direct Loan Limitation		1,296,352	110,190
Direct Loan Floor		897,475	76,285
Guaranteed Loan Limitation		2,188,841	186,051
Guaranteed Loan Floor		972,264	82,642
Outlays		217,988	18,529
Rural telephone bank	(05-72-4231	-X-3-452-A;	12-4231)
Direct Loan Limitation		219,383	18,648
Direct Loan Floor		184,481	15,681
Outlays		11,518	979
Farmers Home Administration			
Salaries and expenses	(05-75-2001	-X-1-452-A;	12-2001)
Budget Authority		421,900	35,862
Outlays		384,572	32,689
Rural housing for domestic farm labor	(05-75-2004	-X-1-604-A;	12-2004)
Budget Authority		9,913	843
Outlays		396	34
Mutual and self-help housing	(05-75-2006	-X-1-604-A;	12-2006)
Budget Authority		8,336	709
Outlays		667	57
Very low income housing repair grants	(05-75-2064	-X-1-604-A;	12-2064)
Budget Authority		13,025	1,107
Outlays		12,374	1,052
Rural water and waste disposal grants	(05-75-2066	-X-1-452-A;	12-2066)
Budget Authority		113,989	9,689
Outlays		2,280	194
Rural community fire protection grants	(05-75-2067	-X-1-452-A;	12-2067)
Budget Authority		3,221	274
Outlays		1,449	123
Rural housing preservation grants	(05-75-2070	-X-1-604-A;	12-2070)
Budget Authority		19,944	1,695
Outlays		4,986	424
Compensation for construction defects	(05-75-2071	-X-1-371-A;	12-2071)
Budget Authority		743	63
Outlays		743	63
Agricultural credit insurance fund	(05-75-4140	-X-3-351-A;	12-4140)
401(C) Authority--Off. Coll.		248,596	21,131
Direct Loan Limitation		1,893,476	160,945
Guaranteed Loan Limitation		2,602,916	221,248
Outlays		1,869,806	158,942
Rural housing insurance fund	(05-75-4141	-X-3-371-A;	12-4141)
401(C) Authority--Off. Coll.		53,500	4,548
Direct Loan Limitation		1,998,653	169,886
Obligation Limitation		286,873	24,384
Outlays		1,120,723	95,261
Rural development insurance fund	(05-75-4155	-X-3-452-A;	12-4155)
401(C) Authority--Off. Coll.		1,175	100
Direct Loan Limitation		443,975	37,738
Guaranteed Loan Limitation		119,663	10,171
Outlays		13,319	1,132
Self-help housing land development fund	(05-75-4222	-X-3-371-A;	12-4222)
Direct Loan Limitation		521	44
Rural development loan fund	(05-75-4233	-X-3-452-A;	12-4233)
401(C) Authority--Off. Coll.		3,500	298
Outlays		-3,500	-298
Miscellaneous expiring appropriations	(05-75-9912	-X-1-452-A;	12-9912)
Budget Authority		3,126	266
Outlays		2,084	177
Soil Conservation Service			
Conservation operations	(05-78-1000	-X-1-302-A;	12-1000)
Budget Authority		423,525	36,000
401(C) Authority--Off. Coll.		11,173	950
Outlays		400,818	34,070
Resource conservation and development	(05-78-1010	-X-1-302-A;	12-1010)
Budget Authority		26,984	2,294
401(C) Authority--Off. Coll.		1,937	165
Outlays		23,120	1,965
Watershed planning	(05-78-1066	-X-1-301-A;	12-1066)
Budget Authority		9,285	789
401(C) Authority--Off. Coll.		600	51
Outlays		9,328	793
River basin surveys and investigations	(05-78-1069	-X-1-301-A;	12-1069)
Budget Authority		12,930	1,099
401(C) Authority--Off. Coll.		198	17
Outlays		12,352	1,050



Account Title		Base	Sequester
Watershed and flood prevention operations	(05-78-1072)	-X-1-301-A;	12-1072)
Budget Authority		186,929	15,889
401(C) Authority--Off. Coll.		17,595	1,496
Outlays		133,135	11,316
Great plains conservation program	(05-78-2268)	-X-1-302-A;	12-2268)
Budget Authority		21,861	1,858
Outlays		10,789	917
Miscellaneous contributed funds (Water resources)	(05-78-8210)	-X-7-301-A;	12-8210)
401(C) Other--incl. ob. limit		460	39
Outlays		520	44
Miscellaneous contributed funds (Conservation and land	(05-78-8210)	-X-7-302-A;	12-8210)
401(C) Other--incl. ob. limit		100	8
Outlays		30	3
Animal and Plant Health Inspection Service			
Salaries and expenses	(05-79-1600)	-X-1-352-A;	12-1600)
Budget Authority		332,884	28,295
401(C) Authority--Off. Coll.		9,568	813
Outlays		244,897	20,816
Buildings and facilities	(05-79-1601)	-X-1-352-A;	12-1601)
Budget Authority		2,340	199
Miscellaneous trust funds	(05-79-9971)	-X-7-352-A;	12-9971)
401(C) Other--incl. ob. limit		4,735	402
Outlays		1,607	137
Federal Grain Inspection Service			
Salaries and expenses	(05-80-2400)	-X-1-352-A;	12-2400)
Budget Authority		7,266	618
Outlays		7,266	618
Inspection and weighing services	(05-80-4050)	-X-3-352-A;	12-4050)
401(C) Authority--Off. Coll.		36,829	3,130
Outlays		36,829	3,130
Agricultural Marketing Service			
Marketing services	(05-81-2500)	-X-1-352-A;	12-2500)
Budget Authority		33,679	2,863
401(C) Authority--Off. Coll.		30,742	2,613
Outlays		54,769	4,655
Payments to States and possessions	(05-81-2501)	-X-1-352-A;	12-2501)
Budget Authority		982	83
Outlays		982	83
Perishable Agricultural Commodities Act fund	(05-81-5070)	-X-2-352-A;	12-5070)
401(C) Authority		4,240	360
Outlays		3,596	306
Funds for strengthening markets, income, and supply (s	(05-81-5209)	-X-2-605-A;	12-5209)
401(C) Authority		361,988	30,769
Outlays		136,988	11,644
Milk market orders assessment fund	(05-81-8412)	-X-8-351-A;	12-8412)
401(C) Authority--Off. Coll.		35,110	2,984
Outlays		35,110	2,984
Miscellaneous trust funds	(05-81-9972)	-X-7-352-A;	12-9972)
401(C) Authority		85,979	7,308
Outlays		85,979	7,308
Office of Transportation			
Office of Transportation	(05-82-2800)	-X-1-352-A;	12-2800)
Budget Authority		2,565	218
Outlays		1,840	156
Food Safety and Inspection Service			
Salaries and expenses	(05-83-3700)	-X-1-554-A;	12-3700)
Budget Authority		394,996	33,575
401(C) Authority--Off. Coll.		42,050	3,574
Outlays		402,470	34,210
Exp. & refunds, insp. & grading	(05-83-8137)	-X-7-352-A;	12-8137)
401(C) Authority		825	70
Outlays		825	70
Food and Nutrition Service			
Food donations program	(05-84-3503)	-X-1-605-A;	12-3503)
Budget Authority		201,720	17,146
Outlays		183,565	15,603
Food stamp program	(05-84-3505)	-X-1-605-A;	12-3505)
401(C) Authority		55,762	4,740
Outlays		36,600	3,111
Food program administration	(05-84-3508)	-X-1-605-A;	12-3508)
Budget Authority		90,249	7,671
Outlays		82,577	7,019
Special supplemental food prog. for women, infants and	(05-84-3510)	-X-1-605-A;	12-3510)
Budget Authority		2,084	177
Outlays		2,084	177
Child nutrition programs	(05-84-3539)	-X-1-605-A;	12-3539)
401(C) Authority		3,033	258
Outlays		3,033	258



Account Title		Base	Sequester
Human Nutrition Information Service			
Salaries and Expenses	(05-86-3501	-X-1-352-A;	12-3501)
Budget Authority		7,369	626
Outlays		3,627	308
Packers and Stockyards Administration			
Packers and Stockyards Administration	(05-90-2600	-X-1-352-A;	12-2600)
Budget Authority		9,771	831
Outlays		8,680	738
Agricultural Cooperative Service			
Salaries and expenses	(05-92-3000	-X-1-352-A;	12-3000)
Budget Authority		4,840	411
Outlays		1,959	167
Forest Service			
Construction	(05-96-1103	-X-1-302-A;	12-1103)
Budget Authority		281,149	23,898
401(C) Authority--Off. Coll.		2,061	175
Outlays		189,090	16,073
Forest research	(05-96-1104	-X-1-302-A;	12-1104)
Budget Authority		134,369	11,421
401(C) Authority--Off. Coll.		929	79
Outlays		113,378	9,637
State and private forestry	(05-96-1105	-X-1-302-A;	12-1105)
Budget Authority		69,853	5,938
401(C) Authority--Off. Coll.		135	11
Outlays		51,942	4,415
National forest system	(05-96-1106	-X-1-302-A;	12-1106)
Budget Authority		1,252,040	106,423
Outlays		1,140,544	96,946
Land acquisition	(05-96-5004	-X-2-303-A;	12-5004)
Budget Authority		54,583	4,640
Outlays		24,476	2,080
Range betterment fund	(05-96-5207	-X-2-302-A;	12-5207)
Budget Authority		3,888	330
Outlays		3,110	264
Acquisition of lands for nat'l forests	(05-96-5208	-X-2-302-A;	12-5208)
Budget Authority		1,012	86
Outlays		1,012	86
Acq. of lands to complete land exchanges	(05-96-5216	-X-2-302-A;	12-5216)
Budget Authority		934	79
Outlays		830	71
Operations and maintenance of quarters	(05-96-5219	-X-2-302-A;	12-5219)
401(C) Other--incl. ob. limit		5,812	494
Outlays		4,015	341
Cooperative work trust fund	(05-96-8028	-X-7-302-A;	12-8028)
401(C) Other--incl. ob. limit		250,369	21,281
Outlays		213,314	18,132
Highway Construction: Mount St. Helens National Monume	(05-96-8029	-X-7-401-A;	12-8029)
Budget Authority		10,394	883
Outlays		5,862	498
Gifts, donations, bequests for forest and rangeland re	(05-96-8034	-X-7-302-A;	12-9973)
Budget Authority		94	8
Outlays		94	8
Reforestation trust fund	(05-96-8046	-X-7-302-A;	20-8046)
401(C) Other--incl. ob. limit		30,000	2,550
Outlays		30,000	2,550
Forest Service permanent appropriations	(05-96-9921	-X-2-852-A;	12-9921)
401(C) Other--incl. ob. limit		296,145	25,172
Outlays		222,102	18,879
Forest Service permanent appropriations	(05-96-9922	-X-2-302-A;	12-9922)
401(C) Other--incl. ob. limit		143,660	12,211
Outlays		107,606	9,147
Department of Agriculture	Total		
Budget Authority		8,253,902	701,580
401(C) Authority		16,545,691	1,406,383
401(C) Authority--Off. Coll.		518,930	44,109
401(C) Other--incl. ob. limit		731,281	62,157
401(C) Authority--ASI		4,100	4,100
Direct Loan Limitation		22,215,865	1,888,349
Direct Loan Floor		1,081,956	91,966
Guaranteed Loan Limitation		10,411,420	884,970
Guaranteed Loan Floor		972,264	82,642
Obligation Limitation		1,811,393	153,968
Outlays		27,112,905	2,308,346
Department of Commerce			
General Administration			
Salaries and expenses	(06-05-0120	-X-1-376-A;	13-0120)
Budget Authority		38,624	3,283
Outlays		35,256	2,997



Account Title		Base	Sequester
Grants and loans administration	(06-05-0125	-X-1-452-A;	13-0125)
Budget Authority		27,192	2,311
Outlays		24,762	2,105
Economic development assistance programs	(06-05-2050	-X-1-452-A;	13-2050)
Budget Authority		199,584	16,965
Guaranteed Loan Limitation		195,375	16,607
Outlays		19,958	1,696
<u>Bureau of the Census</u>			
Salaries and expenses	(06-07-0401	-X-1-376-A;	13-0401)
Budget Authority		89,289	8,440
401(C) Authority--Off. Coll.		8,000	680
Outlays		96,474	8,200
Periodic censuses and programs	(06-07-0450	-X-1-376-A;	13-0450)
Budget Authority		185,071	15,731
Outlays		146,897	12,486
<u>Economic and Statistical Analysis</u>			
Salaries and expenses	(06-08-1500	-X-1-376-A;	13-1500)
Budget Authority		32,793	2,787
401(C) Authority--Off. Coll.		462	39
Outlays		29,023	2,467
Information products and services	(06-08-8546	-X-7-376-A;	13-8546)
401(C) Other--incl. ob. limit		36,980	3,143
Outlays		25,603	2,176
<u>International Trade Administration</u>			
Operations and administration	(06-25-1250	-X-1-376-A;	13-1250)
Budget Authority		215,601	18,326
401(C) Authority--Off. Coll.		9,000	765
Outlays		161,629	13,738
<u>Minority Business Development Agency</u>			
Minority business development	(06-40-0201	-X-1-376-A;	13-0201)
Budget Authority		41,855	3,558
Outlays		15,485	1,316
<u>United States Travel and Tourism Administration</u>			
Salaries and expenses	(06-44-0700	-X-1-376-A;	13-0700)
Budget Authority		12,225	1,039
401(C) Authority--Off. Coll.		1,475	125
Outlays		9,436	802
<u>National Oceanic and Atmospheric Administration</u>			
Operations, research, and facilities	(06-48-1450	-X-1-306-A;	13-1450)
Budget Authority		1,157,480	98,386
401(C) Authority--Off. Coll.		14,952	1,271
Outlays		778,889	66,206
Coastal energy impact fund	(06-48-4315	-X-3-452-A;	13-4315)
401(C) Authority--Off. Coll.		7,300	620
Outlays		7,300	620
Federal ship financing fund, fishing vessels	(06-48-4417	-X-3-376-A;	13-4417)
401(C) Authority--Off. Coll.		1,160	99
Guaranteed Loan Limitation		83,360	7,086
Outlays		2,320	197
Fishermen's contingency fund	(06-48-5120	-X-2-376-A;	13-5120)
Budget Authority		783	67
Outlays		721	61
Foreign fishing observer fund	(06-48-5122	-X-2-376-A;	13-5122)
Budget Authority		2,116	180
Outlays		2,079	177
Fisheries Promotional Fund	(06-48-5124	-X-2-376-A;	13-5124)
401(C) Authority		750	64
Outlays		467	40
Promote and develop fishery products and research	(06-48-5139	-X-2-376-A;	13-5139)
401(C) Other--incl. ob. limit		4,876	414
Outlays		3,032	258
Aviation weather services program	(06-48-8105	-X-7-306-A;	13-8105)
Budget Authority		30,218	2,569
Outlays		30,218	2,569
<u>Patent and Trademark Office</u>			
Salaries and expenses	(06-51-1006	-X-1-376-A;	13-1006)
Budget Authority		105,670	8,982
401(C) Authority--Off. Coll.		145,075	12,331
Outlays		210,479	17,891
<u>National Bureau of Standards</u>			
Scientific and technical research and services	(06-52-0500	-X-1-376-A;	13-0500)
Budget Authority		129,662	11,021
Outlays		100,378	8,532
Working capital fund	(06-52-4650	-X-4-376-A;	13-4650)
Budget Authority		2,208	188
Outlays		1,104	94
<u>National Telecommunications and Information Admin.</u>			
Salaries and expenses	(06-60-0550	-X-1-376-A;	13-0550)
Budget Authority		14,128	1,201
Outlays		12,287	1,044



Account Title	Base	Sequester
Public telecommunications facilities, planning and con (06-60-0551)	-X-1-503-A; 13-0551)	
Budget Authority	21,823	1,855
Outlays	2,524	215
Department of Commerce	Total	
Budget Authority	2,316,322	196,889
401(C) Authority	750	64
401(C) Authority--Off. Coll.	187,424	15,930
401(C) Other--incl. ob. limit	41,856	3,557
Guaranteed Loan Limitation	278,735	23,693
Outlays	1,716,321	145,887
Department of Defense--Military		
Operation and Maintenance		
Operation and maintenance, Defense agencies	(07-10-0100 -X-1-051-A; 97-0100)	
Budget Authority	8,983,122	943,228
Outlays	7,520,593	789,662
Court of Military Appeals, Defense	(07-10-0104 -X-1-051-A; 97-0104)	
Budget Authority	3,473	365
Outlays	3,004	315
Foreign currency fluctuations, Defense	(07-10-0801 -X-1-051-A; 97-0801)	
Unobligated Balances--Defense	173,291	18,196
Environmental restoration, Defense	(07-10-0810 -X-1-051-A; 97-0810)	
Budget Authority	1,032	108
Tenth International Pan American games	(07-10-0812 -X-1-051-A; 97-0812)	
Budget Authority	15,630	1,641
Outlays	7,034	739
Humanitarian Assistance	(07-10-0819 -X-1-051-A; 97-0819)	
Budget Authority	7,815	821
Outlays	3,908	410
Operation and maintenance, Marine Corps	(07-10-1106 -X-1-051-A; 17-1106)	
Budget Authority	1,905,232	200,049
Outlays	1,311,980	137,758
Operation and maintenance, Marine Corps Reserve	(07-10-1107 -X-1-051-A; 17-1107)	
Budget Authority	67,064	7,042
Outlays	46,147	4,845
National Board for the Promotion of Rifle Practice, Ar	(07-10-1705 -X-1-051-A; 21-1705)	
Budget Authority	4,527	475
Outlays	2,951	310
Operation and maintenance, Navy	(07-10-1804 -X-1-051-A; 17-1804)	
Budget Authority	24,646,170	2,587,848
Outlays	16,739,423	1,757,639
Operation and maintenance, Navy Reserve	(07-10-1806 -X-1-051-A; 17-1806)	
Budget Authority	928,675	97,511
Outlays	555,436	58,321
Operation and maintenance, Army	(07-10-2020 -X-1-051-A; 21-2020)	
Budget Authority	21,646,956	2,272,930
Outlays	16,101,237	1,690,630
Operation and maintenance, Army National Guard	(07-10-2065 -X-1-051-A; 21-2065)	
Budget Authority	1,860,443	195,347
Outlays	1,439,983	151,198
Operation and maintenance, Army Reserve	(07-10-2080 -X-1-051-A; 21-2080)	
Budget Authority	828,565	86,999
Outlays	620,595	65,162
Operation and maintenance, Air Force	(07-10-3400 -X-1-051-A; 57-3400)	
Budget Authority	19,922,339	2,091,846
Outlays	15,029,024	1,578,048
Operation and maintenance, Air Force Reserve	(07-10-3740 -X-1-051-A; 57-3740)	
Budget Authority	973,280	102,194
Outlays	817,182	85,804
Operation and maintenance, Air National Guard	(07-10-3840 -X-1-051-A; 57-3840)	
Budget Authority	1,877,782	197,167
Outlays	1,552,746	163,038
Procurement		
Procurement, Defense agencies	(07-15-0300 -X-1-051-A; 97-0300)	
Budget Authority	1,586,106	166,541
Unobligated Balances--Defense	500,268	52,528
Outlays	542,458	56,958
National Guard and Reserve Equipment	(07-15-0350 -X-1-051-A; 97-0350)	
Budget Authority	580,394	60,941
Unobligated Balances--Defense	414,279	43,499
Outlays	29,840	3,133
Defense Production Act purchases	(07-15-0360 -X-1-051-A; 97-0360)	
Budget Authority	13,546	1,422
Unobligated Balances--Defense	24,792	2,603
NATO cooperative defense programs	(07-15-0370 -X-1-051-A; 97-0370)	
Unobligated Balances--Defense	5,706	599
Coastal defense augmentation	(07-15-0380 -X-1-051-A; 17-0380)	
Budget Authority	208,400	21,882
Unobligated Balances--Defense	331,121	34,768
Outlays	56,650	5,948



Account Title		Base	Sequester
Chemical agents and munitions destruction, Defense	(07-15-0390	-X-1-051-A;	97-0390)
Budget Authority		123,685	12,987
Unobligated Balances--Defense		10,802	1,134
Outlays		26,264	2,758
Procurement, Marine Corps	(07-15-1109	-X-1-051-A;	17-1109)
Budget Authority		1,526,754	160,309
Unobligated Balances--Defense		476,953	50,080
Outlays		370,686	38,922
Aircraft procurement, Navy	(07-15-1506	-X-1-051-A;	17-1506)
Budget Authority		10,396,307	1,091,612
Unobligated Balances--Defense		2,900,683	304,572
Outlays		1,458,806	153,175
Weapons procurement, Navy	(07-15-1507	-X-1-051-A;	17-1507)
Budget Authority		5,513,063	578,872
Unobligated Balances--Defense		2,422,876	254,402
Outlays		555,515	58,329
Shipbuilding and conversion, Navy	(07-15-1611	-X-1-051-A;	17-1611)
Budget Authority		10,639,851	1,117,184
Unobligated Balances--Defense		11,380,409	1,194,943
Outlays		1,321,216	138,728
Other procurement, Navy	(07-15-1810	-X-1-051-A;	17-1810)
Budget Authority		6,289,377	660,385
Unobligated Balances--Defense		2,100,104	220,511
Outlays		880,895	92,494
Aircraft procurement, Army	(07-15-2031	-X-1-051-A;	21-2031)
Budget Authority		2,897,542	304,242
Unobligated Balances--Defense		779,397	81,837
Outlays		586,531	61,586
Missile procurement, Army	(07-15-2032	-X-1-051-A;	21-2032)
Budget Authority		2,299,486	241,446
Unobligated Balances--Defense		787,315	82,668
Outlays		312,365	32,798
Procurement of weapons and tracked combat vehicles, Ar	(07-15-2033	-X-1-051-A;	21-2033)
Budget Authority		3,964,646	416,288
Unobligated Balances--Defense		1,257,398	132,027
Outlays		142,008	14,911
Procurement of ammunition, Army	(07-15-2034	-X-1-051-A;	21-2034)
Budget Authority		2,174,943	228,369
Unobligated Balances--Defense		389,565	40,904
Outlays		814,275	85,499
Other procurement, Army	(07-15-2035	-X-1-051-A;	21-2035)
Budget Authority		5,321,197	558,726
Unobligated Balances--Defense		2,068,782	217,222
Outlays		591,198	62,076
Aircraft procurement, Air Force	(07-15-3010	-X-1-051-A;	57-3010)
Budget Authority		17,980,628	1,887,966
Unobligated Balances--Defense		7,971,967	837,057
Outlays		1,705,302	179,057
Missile procurement, Air Force	(07-15-3020	-X-1-051-A;	57-3020)
Budget Authority		7,761,043	814,910
Unobligated Balances--Defense		3,376,605	354,544
Outlays		2,834,375	297,609
Other procurement, Air Force	(07-15-3080	-X-1-051-A;	57-3080)
Budget Authority		9,718,865	1,020,481
Unobligated Balances--Defense		2,571,477	270,005
Outlays		6,235,963	654,776
<u>Research, Development, Test, and Evaluation</u>			
Research, development, test, and evaluation, Defense a	(07-20-0400	-X-1-051-A;	97-0400)
Budget Authority		7,051,759	740,435
Unobligated Balances--Defense		524,904	55,115
Outlays		3,598,915	377,886
Director of test and evaluation, Defense	(07-20-0450	-X-1-051-A;	97-0450)
Budget Authority		124,942	13,119
Unobligated Balances--Defense		29,976	3,147
Outlays		44,151	4,636
Director of operational test and evaluation, Defense	(07-20-0460	-X-1-051-A;	97-0460)
Budget Authority		11,775	1,236
Unobligated Balances--Defense		1,130	119
Outlays		3,678	386
Research, development, test, and evaluation, Navy	(07-20-1319	-X-1-051-A;	17-1319)
Budget Authority		9,731,489	1,021,806
Unobligated Balances--Defense		477,908	50,180
Outlays		5,513,073	578,873
Research, development, test, and evaluation, Army	(07-20-2040	-X-1-051-A;	21-2040)
Budget Authority		4,809,563	505,004
Unobligated Balances--Defense		423,193	44,435
Outlays		2,511,724	263,731



Account Title		Base	Sequester
Research, development, test, and evaluation, Air Force (07-20-3600)	-X-1-051-A;	57-3600)	
Budget Authority		15,744,258	1,653,147
Unobligated Balances--Defense		1,725,192	181,145
Outlays		9,084,114	953,832
<b>Military Construction</b>			
Military construction, Defense agencies (07-25-0500)	-X-1-051-A;	97-0500)	
Budget Authority		552,333	57,995
Unobligated Balances--Defense		326,662	34,300
Outlays		58,356	6,127
North Atlantic Treaty Organization infrastructure (07-25-0804)	-X-1-051-A;	97-0804)	
Budget Authority		241,744	25,383
Unobligated Balances--Defense		62,182	6,529
Outlays		3,039	319
Military construction, Navy (07-25-1205)	-X-1-051-A;	17-1205)	
Budget Authority		1,442,323	151,444
Unobligated Balances--Defense		860,936	90,398
Outlays		449,136	47,159
Military construction, Naval Reserve (07-25-1235)	-X-1-051-A;	17-1235)	
Budget Authority		46,369	4,869
Unobligated Balances--Defense		22,239	2,335
Outlays		10,291	1,081
Military construction, Army (07-25-2050)	-X-1-051-A;	21-2050)	
Budget Authority		1,334,727	140,146
Unobligated Balances--Defense		834,853	87,670
Outlays		433,936	45,563
Military construction, Army National Guard (07-25-2085)	-X-1-051-A;	21-2085)	
Budget Authority		146,796	15,414
Unobligated Balances--Defense		15,729	1,652
Outlays		19,502	2,048
Military construction, Army Reserve (07-25-2086)	-X-1-051-A;	21-2086)	
Budget Authority		90,544	9,507
Unobligated Balances--Defense		17,246	1,811
Outlays		26,948	2,830
Military construction, Air Force (07-25-3300)	-X-1-051-A;	57-3300)	
Budget Authority		1,294,716	135,945
Unobligated Balances--Defense		769,103	80,756
Outlays		268,296	28,171
Military construction, Air Force Reserve (07-25-3730)	-X-1-051-A;	57-3730)	
Budget Authority		61,374	6,444
Unobligated Balances--Defense		20,504	2,153
Outlays		9,006	946
Military construction, Air National Guard (07-25-3830)	-X-1-051-A;	57-3830)	
Budget Authority		155,180	16,294
Unobligated Balances--Defense		36,097	3,790
Outlays		19,128	2,008
<b>Family Housing</b>			
Family housing, Army (07-30-0702)	-X-1-051-A;	21-0702)	
Budget Authority		1,660,616	174,365
Unobligated Balances--Defense		166,854	17,520
Outlays		863,612	90,679
Family housing, Navy and Marine Corps (07-30-0703)	-X-1-051-A;	17-0703)	
Budget Authority		729,483	76,596
Unobligated Balances--Defense		73,942	7,764
Outlays		366,124	38,443
Family housing, Air Force (07-30-0704)	-X-1-051-A;	57-0704)	
Budget Authority		842,468	88,459
Unobligated Balances--Defense		163,360	17,153
Outlays		502,690	52,782
Family housing, Defense agencies (07-30-0706)	-X-1-051-A;	97-0706)	
Budget Authority		17,342	1,821
Unobligated Balances--Defense		1,739	183
Outlays		11,479	1,205
<b>Special Foreign Currency Program</b>			
Special foreign currency program (07-37-0800)	-X-1-051-A;	97-0800)	
Budget Authority		3,647	383
Unobligated Balances--Defense		1,925	202
Outlays		613	64
<b>Revolving and Management Funds</b>			
ADP equipment management fund (07-40-3910)	-X-4-051-A;	97-3910)	
Unobligated Balances--Defense		75,145	7,890
Navy stock fund (07-40-4911)	-X-4-051-A;	17-4911)	
Budget Authority		367,378	38,575
Outlays		121,235	12,730
Marine Corps stock fund (07-40-4913)	-X-4-051-A;	17-4913)	
Budget Authority		856	90
Outlays		282	30
Air Force stock fund (07-40-4921)	-X-4-051-A;	57-4921)	
Budget Authority		145,859	15,315
Outlays		48,133	5,054



Account Title		Base	Sequester
Defense stock fund	(07-40-4961	-X-4-051-A;	97-4961)
Budget Authority		49,182	5,164
Outlays		16,230	1,704
Army stock fund	(07-40-4991	-X-4-051-A;	21-4991)
Budget Authority		114,724	12,046
Outlays		37,859	3,975
Department of Defense--Military	Total		
Budget Authority		219,439,385	23,041,136
Unobligated Balances--Defense		46,574,709	4,890,346
Outlays		104,237,140	10,944,898
Department of Defense--Civil			
Cemeterial Expenses, Army			
Salaries and expenses	(08-05-1805	-X-1-705-A;	21-1805)
Budget Authority		16,696	1,419
Outlays		6,491	552
Corps of Engineers--Civil			
Flood control, Mississippi River and tributaries	(08-10-3112	-X-1-301-A;	96-3112)
Budget Authority		330,073	28,056
401(C) Authority--Off. Coll.		1,000	85
Outlays		288,809	24,549
General investigations	(08-10-3121	-X-1-301-A;	96-3121)
Budget Authority		146,996	12,495
401(C) Authority--Off. Coll.		18	2
Outlays		116,051	9,864
Construction, general	(08-10-3122	-X-1-301-A;	96-3122)
Budget Authority		1,185,965	100,807
401(C) Authority--Off. Coll.		225	19
Outlays		802,978	76,753
Operation and maintenance, general	(08-10-3123	-X-1-301-A;	96-3123)
Budget Authority		1,308,280	111,204
401(C) Authority--Off. Coll.		3,803	323
Outlays		1,112,100	94,528
Operation and maintenance, general	(08-10-3123	-X-1-303-A;	96-3123)
Budget Authority		13,314	1,132
Outlays		13,314	1,132
General expenses	(08-10-3124	-X-1-301-A;	96-3124)
Budget Authority		125,294	10,650
Outlays		106,245	9,031
Flood control and coastal emergencies	(08-10-3125	-X-1-301-A;	96-3125)
Budget Authority		10,501	893
Revolving fund	(08-10-4902	-X-4-301-A;	96-4902)
Budget Authority		12,509	1,063
Outlays		10,423	886
Inland waterways trust fund	(08-10-8861	-X-7-301-A;	20-8861)
Budget Authority		27,092	2,303
Outlays		27,092	2,303
Rivers and harbors contributed funds	(08-10-8862	-X-7-301-A;	96-8862)
401(C) Other--incl. ob. limit		237,000	20,145
Outlays		150,493	12,792
Harbor maintenance trust fund	(08-10-8867	-X-7-301-A;	96-8867)
Budget Authority		155,466	13,215
Outlays		155,466	13,215
Permanent appropriations (Water resources)	(08-10-9921	-X-2-301-A;	96-9921)
401(C) Other--incl. ob. limit		3,000	255
Outlays		48	4
Permanent appropriations (Other general purpose fiscal	(08-10-9921	-X-2-852-A;	96-9921)
401(C) Other--incl. ob. limit		6,000	510
Education Benefits			
Payment to the Henry M. Jackson Foundation	(08-19-0825	-X-1-502-A;	97-0825)
Budget Authority		10,420	886
Soldiers' and Airmen's Home			
Operation and maintenance	(08-20-8931	-X-7-705-A;	84-8931)
Budget Authority		37,072	3,151
401(C) Authority--Off. Coll.		144	12
Outlays		28,837	2,451
Capital outlay	(08-20-8932	-X-7-705-A;	84-8932)
Budget Authority		16,923	1,438
Outlays		2,048	174
Forest & Wildlife Conservation, Mil. Reservations			
Wildlife conservation	(08-30-5095	-X-2-303-A;	97-5095)
401(C) Other--incl. ob. limit		2,020	172
Outlays		2,020	172
Forest products program	(08-30-5285	-X-2-302-A;	21-5285)
401(C) Authority		1,500	128
Outlays		1,500	128
Department of Defense--Civil	Total		
Budget Authority		3,396,601	288,712
401(C) Authority		1,500	128
401(C) Authority--Off. Coll.		5,190	441
401(C) Other--incl. ob. limit		248,020	21,082
Outlays		2,923,915	248,534



Account Title		Base	Sequester
<u>Department of Education</u>			
<u>Office of Elementary and Secondary Education</u>			
Indian education	(18-10-0101	-X-1-501-A;	91-0101)
Budget Authority		66,842	5,682
Outlays		29,688	2,523
Impact aid	(18-10-0102	-X-1-501-A;	91-0102)
Budget Authority		747,635	63,549
Outlays		581,295	49,410
Chicago litigation settlement	(18-10-0220	-X-1-501-A;	91-0220)
Budget Authority		86,486	7,351
Compensatory education for the disadvantaged	(18-10-0900	-X-1-501-A;	91-0900)
Budget Authority		4,117,633	349,999
Outlays		288,759	24,545
Special programs	(18-10-1000	-X-1-501-A;	91-1000)
Budget Authority		978,948	83,211
Outlays		137,438	11,682
<u>Off. of Bilingual Ed. &amp; Minority Languages Affairs</u>			
Bilingual education	(18-15-1300	-X-1-501-A;	91-1300)
Budget Authority		180,365	15,331
Outlays		6,589	560
Immigrant and refugee education	(18-15-1600	-X-1-501-A;	91-1600)
Budget Authority		16,553	1,407
Outlays		331	28
<u>Office of Special Education &amp; Rehabilitative Svcs.</u>			
Education for the handicapped	(18-20-0300	-X-1-501-A;	91-0300)
Budget Authority		1,815,060	154,280
Outlays		81,634	6,939
Vocational rehabilitation	(18-20-0301	-X-1-506-A;	91-0301)
Budget Authority		212,316	18,047
401(C) Authority		20,112	20,112
Outlays		178,969	29,382
Special institutions for the handicapped (APHB)	(18-20-0604	-X-1-501-D;	91-0600)
Budget Authority		5,731	487
Outlays		5,731	487
Special institutions for the handicapped (NTID)	(18-20-0604	-X-1-502-B;	91-0604)
Budget Authority		33,344	2,834
Outlays		33,344	2,834
Special institutions for the handicapped (Gallaudet)	(18-20-0604	-X-1-502-C;	91-0604)
Budget Authority		64,604	5,491
Outlays		60,883	5,175
Promotion of education for the blind	(18-20-8893	-X-7-501-A;	91-8893)
401(C) Authority		10	1
Outlays		5	0
<u>Office of Vocational and Adult Education</u>			
Vocational and adult education	(18-30-0400	-X-1-501-A;	91-0400)
Budget Authority		1,029,183	87,481
401(C) Authority		7,148	608
Outlays		124,360	10,571
<u>Office of Postsecondary Education</u>			
Student financial assistance	(18-40-0200	-X-1-502-A;	91-0200)
Budget Authority		5,713,286	485,629
Outlays		1,060,033	80,103
Higher education	(18-40-0201	-X-1-502-A;	91-0201)
Budget Authority		502,690	42,729
Outlays		60,247	5,121
Guaranteed student loans	(18-40-0230	-X-1-502-A;	91-0230)
401(C) Authority--Spec. Rules		35,516	35,516
Outlays		22,556	22,556
Howard University	(18-40-0603	-X-1-502-A;	91-0603)
Budget Authority		177,380	15,077
Outlays		168,907	14,357
College housing loans	(18-40-4250	-X-3-502-A;	91-4250)
401(C) Authority--Off. Coll.		1,926	164
Direct Loan Limitation		62,520	5,314
Outlays		1,922	163
<u>Office of Educational Research and Improvement</u>			
Libraries	(18-50-0104	-X-1-503-A;	91-0104)
Budget Authority		138,065	11,736
Outlays		72,180	6,135
Education research and statistics	(18-50-1100	-X-1-503-A;	91-1100)
Budget Authority		66,248	5,631
Outlays		41,074	3,491
<u>Departmental Management</u>			
Salaries and expenses (Research and general education	(18-80-0800	-X-1-503-A;	91-0800)
Budget Authority		253,595	21,556
Outlays		210,484	17,891
Salaries and expenses (Federal law enforcement activit	(18-80-0800	-X-1-751-A;	91-0800)
Budget Authority		64,871	5,514
Outlays		53,843	4,577



Account Title	Total	Base	Sequester
Department of Education			
Budget Authority		16,270,835	1,383,022
401(C) Authority		27,270	20,721
401(C) Authority--Off. Coll.		1,926	164
401(C) Authority--Spec. Rules		35,516	35,516
Direct Loan Limitation		62,520	5,314
Outlays		3,220,272	308,530
Department of Energy			
Atomic Energy Defense Activities			
Atomic energy defense activities	(19-10-0220	-X-1-053-A;	89-0220)
Budget Authority		7,800,078	819,008
Unobligated Balances--Defense		45,000	4,725
Outlays		4,863,948	510,715
Energy Programs			
Geothermal resources development fund	(19-20-0206	-X-1-271-A;	89-0206)
Budget Authority		80	7
Outlays		80	7
Federal Energy Regulatory Commission	(19-20-0212	-X-1-276-A;	89-0212)
Budget Authority		107,580	9,144
Outlays		103,508	8,798
Fossil energy research and development	(19-20-0213	-X-1-271-A;	89-0213)
Budget Authority		310,523	26,394
Outlays		93,157	7,918
Energy conservation (Energy conservation)	(19-20-0215	-X-1-272-A;	89-0215)
Budget Authority		244,259	20,762
Outlays		97,213	8,263
Energy information administration	(19-20-0216	-X-1-276-A;	89-0216)
Budget Authority		64,182	5,455
Outlays		42,681	3,628
Economic regulation	(19-20-0217	-X-1-276-A;	89-0217)
Budget Authority		25,350	2,155
Outlays		15,975	1,358
Strategic petroleum reserve	(19-20-0218	-X-1-274-A;	89-0218)
Budget Authority		153,960	13,087
Outlays		135,748	11,539
Naval petroleum and shale reserves	(19-20-0219	-X-1-271-A;	89-0219)
Budget Authority		127,531	10,840
Outlays		67,491	5,737
General science and research activities	(19-20-0222	-X-1-251-A;	89-0222)
Budget Authority		738,337	62,759
Outlays		502,806	42,739
Energy supply, R&D activities	(19-20-0224	-X-1-271-A;	89-0224)
Budget Authority		1,405,725	119,487
Outlays		730,976	62,133
Uranium supply and enrichment activities	(19-20-0226	-X-1-271-A;	89-0226)
Budget Authority		1,261,551	107,232
Outlays		975,076	82,881
Emergency preparedness	(19-20-0234	-X-1-274-A;	89-0234)
Budget Authority		6,553	557
Outlays		4,226	359
Nuclear waste disposal fund	(19-20-5227	-X-2-271-A;	89-5227)
Budget Authority		520,931	44,279
Outlays		260,484	22,141
Power Marketing Administration			
Operation and maintenance, Southeastern Power Administ	(19-50-0302	-X-1-271-A;	89-0302)
Budget Authority		941	80
Outlays		829	70
Operation and maintenance, Southwestern Power Administ	(19-50-0303	-X-1-271-A;	89-0303)
Budget Authority		3,777	321
Outlays		3,323	282
Operation and maintenance, Alaska Power Administration	(19-50-0304	-X-1-271-A;	89-0304)
Budget Authority		837	71
Outlays		736	63
Bonneville Power Administration fund	(19-50-4045	-X-3-271-A;	89-4045)
401(C) Authority--Off. Coll.		47,600	4,046
Outlays		45,200	3,842
Colorado river basins power marketing fund, WAPA	(19-50-4452	-X-3-271-A;	89-4452)
401(C) Authority--Off. Coll.		8,434	717
Outlays		7,422	631
Construction, rehabilitation, operation and maintenanc	(19-50-5068	-X-2-271-A;	89-5068)
Budget Authority		37,611	3,197
Outlays		33,097	2,813
Departmental Administration			
Departmental administration (Energy information, polic	(19-60-0228	-X-1-276-A;	89-0228)
Budget Authority		421,530	35,830
Outlays		231,841	19,706
Department of Energy	Total		
Budget Authority		13,231,336	1,280,665
401(C) Authority--Off. Coll.		56,034	4,763
Unobligated Balances--Defense		45,000	4,725
Outlays		8,215,817	795,623



Account Title		Base	Sequester
<u>Department of Health and Human Services</u>			
<u>Food and Drug Administration</u>			
Program expenses	(09-10-0600	-X-1-554-A;	75-0600)
Budget Authority		474,969	40,372
Outlays		413,222	35,124
Buildings and facilities	(09-10-0603	-X-1-554-A;	75-0603)
Budget Authority		1,958	166
Outlays		904	77
Revolving fund for certification and other services	(09-10-4309	-X-3-554-A;	75-4309)
401(C) Authority--Off. Coll.		2,799	238
Outlays		2,799	238
<u>Health Resources and Services</u>			
Health resources and services (health care services)	(09-15-0350	-X-1-551-A;	75-0350)
Budget Authority		924,110	78,549
401(C) Authority--Off. Coll.		375	32
Direct Loan Limitation		1,042	89
Outlays		793,939	67,485
Health resources and services (2% G-R-H)	(09-15-0350	-X-1-551-G;	75-0350)
Budget Authority--Spec. Rules		9,328	9,328
Outlays		8,004	8,004
Health resources and services (education and training)	(09-15-0350	-X-1-553-A;	75-0350)
Budget Authority		211,754	17,999
Outlays		71,995	6,120
Indian health services	(09-15-0390	-X-1-551-A;	75-0390)
Budget Authority		63,725	5,417
Outlays		51,911	4,412
Indian health services 2% split (G-R-H)	(09-15-0390	-X-1-551-G;	75-0390)
Budget Authority--Spec. Rules		17,101	17,101
401(C) Authority--Spec. Rules		689	689
Outlays		14,853	14,853
Indian health facilities 2% split (G-R-H)	(09-15-0391	-X-1-551-G;	75-0391)
Budget Authority--Spec. Rules		1,484	1,484
Outlays		429	429
<u>Centers for Disease Control</u>			
Disease control (Health care services)	(09-20-0943	-X-1-551-A;	75-0943)
Budget Authority		546,329	46,438
401(C) Authority--Off. Coll.		767	65
Outlays		339,843	28,895
Disease control (Health research)	(09-20-0943	-X-1-552-A;	75-0943)
Budget Authority		74,028	6,292
Outlays		46,268	3,933
<u>National Institutes of Health</u>			
National Library of Medicine (Health research)	(09-25-0807	-X-1-552-A;	75-0807)
Budget Authority		20,454	1,739
Outlays		13,090	1,113
National Library of Medicine (Education and training)	(09-25-0807	-X-1-553-A;	75-0807)
Budget Authority		45,327	3,853
Outlays		29,062	2,470
John E. Fogarty International Center	(09-25-0819	-X-1-552-A;	75-0819)
Budget Authority		12,043	1,024
Outlays		7,708	655
Buildings and facilities	(09-25-0838	-X-1-552-A;	75-0838)
Budget Authority		33,240	2,825
Outlays		19,151	1,628
National Institute on Aging (Health research)	(09-25-0843	-X-1-552-A;	75-0843)
Budget Authority		178,214	15,148
Outlays		62,374	5,302
National Institute on Aging (Education and training)	(09-25-0843	-X-1-553-A;	75-0843)
Budget Authority		7,900	672
Outlays		2,766	235
Nat. Inst. Child Health and Human Development (Health	(09-25-0844	-X-1-552-A;	75-0844)
Budget Authority		367,340	31,224
Outlays		128,918	10,958
Nat. Inst. Child Health and Human Development (Ed. & t	(09-25-0844	-X-1-553-A;	75-0844)
Budget Authority		16,324	1,388
Outlays		2,040	173
Office of the Director (Health research)	(09-25-0846	-X-1-552-A;	75-0846)
Budget Authority		57,921	4,923
Outlays		28,028	2,382
Office of the Director (Education and training)	(09-25-0846	-X-1-553-A;	75-0846)
Budget Authority		2,517	214
Outlays		2,162	184
Research resources (Health research)	(09-25-0848	-X-1-552-A;	75-0848)
Budget Authority		335,368	28,506
Outlays		185,950	15,806
Research resources (Education and training)	(09-25-0848	-X-1-553-A;	75-0848)
Budget Authority		1,325	113
Outlays		73	6



Account Title		Base	Sequester
National Cancer Institute (Health research)	(09-25-0849	-X-1-552-A;	75-0849)
Budget Authority		1,433,953	121,886
401(C) Authority--Off. Coll.		10	1
Outlays		646,648	54,965
National Cancer Institute (Education and training)	(09-25-0849	-X-1-553-A;	75-0849)
Budget Authority		34,643	2,945
Outlays		693	59
National Institute of General Medical Sciences (Health research)	(09-25-0851	-X-1-552-A;	75-0851)
Budget Authority		526,438	44,747
Outlays		261,034	22,188
National Institute of General Medical Sciences (Ed. & Training)	(09-25-0851	-X-1-553-A;	75-0851)
Budget Authority		68,902	5,857
Outlays		7,767	660
National Institute of Environmental Health Sciences (Research)	(09-25-0862	-X-1-552-A;	75-0862)
Budget Authority		210,130	17,861
Outlays		123,543	10,501
National Institute of Environmental Health Sciences (Education and Training)	(09-25-0862	-X-1-553-A;	75-0862)
Budget Authority		9,736	828
Outlays		5,733	487
National Heart, Lung and Blood Institute (Health research)	(09-25-0872	-X-1-552-A;	75-0872)
Budget Authority		928,797	78,948
Outlays		386,633	32,864
National Heart, Lung and Blood Institute (Education and Training)	(09-25-0872	-X-1-553-A;	75-0872)
Budget Authority		42,682	3,628
Outlays		1,707	145
National Institute of Dental Research (Health research)	(09-25-0873	-X-1-552-A;	75-0873)
Budget Authority		118,047	10,034
Outlays		55,122	4,685
National Institute of Dental Research (Education and Training)	(09-25-0873	-X-1-553-A;	75-0873)
Budget Authority		5,802	493
Outlays		3,375	287
National Inst. of Diabetes, and Digestive and Kidney Diseases (Research)	(09-25-0884	-X-1-552-A;	75-0884)
Budget Authority		511,844	43,507
Outlays		91,223	7,754
National Inst. of Diabetes, and Digestive and Kidney Diseases (Education and Training)	(09-25-0884	-X-1-553-A;	75-0884)
Budget Authority		22,774	1,936
Outlays		5,688	483
National Institute of Allergy & Infectious Diseases (Research)	(09-25-0885	-X-1-552-A;	75-0885)
Budget Authority		559,612	47,567
Outlays		222,766	18,935
National Institute of Allergy & Infectious Diseases (Education and Training)	(09-25-0885	-X-1-553-A;	75-0885)
Budget Authority		11,021	937
Outlays		1,653	140
National Institute of Neurological & Communicative Disorders and Stroke (Research)	(09-25-0886	-X-1-552-A;	75-0886)
Budget Authority		497,664	42,301
401(C) Authority--Off. Coll.		12	1
Outlays		190,817	16,219
National Institute of Neurological & Communicative Disorders and Stroke (Education and Training)	(09-25-0886	-X-1-553-A;	75-0886)
Budget Authority		15,262	1,297
Outlays		4,340	369
National Eye Institute (Health research)	(09-25-0887	-X-1-552-A;	75-0887)
Budget Authority		220,210	18,718
Outlays		79,147	6,727
National Eye Institute (Education and training)	(09-25-0887	-X-1-553-A;	75-0887)
Budget Authority		6,201	527
Outlays		657	56
National Ins. of Arthritis and Musculoskeletal and Skin Diseases (Research)	(09-25-0888	-X-1-552-A;	75-0888)
Budget Authority		137,923	11,723
Outlays		130,074	11,056
National Ins. of Arthritis and Musculoskeletal and Skin Diseases (Education and Training)	(09-25-0888	-X-1-553-A;	75-0888)
Budget Authority		6,905	587
Outlays		6,296	535
National Center for Nursing Research	(09-25-0889	-X-1-552-A;	75-0889)
Budget Authority		18,716	1,591
Outlays		8,496	722
National Center for Nursing Research	(09-25-0889	-X-1-553-A;	75-0889)
Budget Authority		2,173	185
Outlays		995	85
<u>Alcohol, Drug Abuse, &amp; Mental Health Administration</u>			
Federal subsidy for St. Elizabeths Hospital	(09-30-1300	-X-1-551-A;	75-1300)
Budget Authority		39,832	3,386
401(C) Authority--Off. Coll.		49,189	4,181
Outlays		89,021	7,567
Alcohol, drug abuse, and mental health (Health care services)	(09-30-1361	-X-1-551-A;	75-1361)
Budget Authority		782,099	66,478
Outlays		644,407	54,775
Alcohol, drug abuse, and mental health (Health research)	(09-30-1361	-X-1-552-A;	75-1361)
Budget Authority		604,422	51,376
Outlays		386,439	32,847



Account Title		Base	Sequester
Alcohol, drug abuse, and mental health (Education and	(09-30-1361	-X-1-553-A;	75-1361)
Budget Authority		40,521	3,444
Outlays		15,805	1,343
<u>Office of Assistant Secretary for Health</u>			
Public health service management (Health care services)	(09-37-1101	-X-1-551-A;	75-1101)
Budget Authority		49,211	4,183
401(C) Authority--Off. Coll.		25	2
Outlays		20,707	1,760
Public health service management (Health research)	(09-37-1101	-X-1-552-A;	75-1101)
Budget Authority		75,617	6,427
Outlays		53,977	4,588
Public health emergency fund	(09-37-1104	-X-1-551-A;	75-1104)
Budget Authority		31,260	2,657
Outlays		6,252	531
<u>Health Care Financing Administration</u>			
Program management (Health care services)	(09-38-0511	-X-1-551-A;	75-0511)
Budget Authority		87,591	7,445
Outlays		79,678	6,773
Program management (Health research)	(09-38-0511	-X-1-552-A;	75-0511)
Budget Authority		10,420	886
Outlays		10,420	886
Federal supplementary medical insurance trust fund	(09-38-8004	-X-7-571-A;	20-8004)
Obligation Limitation		1,053,089	89,513
Outlays		870,251	73,971
FSMI 2% split (G-R-H)	(09-38-8004	-X-7-571-S;	20-8004)
401(C) Authority--Spec. Rules		315,000	315,000
Outlays		315,000	315,000
Federal hospital insurance trust fund	(09-38-8005	-X-7-571-A;	20-8005)
Obligation Limitation		1,138,928	96,809
Outlays		765,149	65,038
FHI 2% split (G-R-H)	(09-38-8005	-X-7-571-S;	20-8005)
401(C) Authority--Spec. Rules		905,000	905,000
Outlays		905,000	905,000
<u>Social Security Administration</u>			
Supplemental security income program	(09-60-0406	-X-1-609-A;	75-0406)
401(C) Authority		895,320	76,102
Outlays		843,134	71,666
Special benefits for disabled coal miners	(09-60-0409	-X-1-601-A;	75-0409)
401(C) Authority		6,493	552
Outlays		6,437	547
<u>Family Support Administration</u>			
Program administration **	(09-70-1500	-X-1-609-A;	75-1500)
Budget Authority		100,051	8,504
401(C) Authority--Off. Coll.		95	8
Outlays		77,993	6,629
Family support payments to States **	(09-70-1501	-X-1-609-A;	75-1501)
401(C) Authority		991,000	84,235
Outlays		991,000	84,235
Low income home energy assistance	(09-70-1502	-X-1-609-A;	75-0420)
Budget Authority		1,898,800	161,398
Outlays		1,727,908	146,872
Refugee and Entrant Assistance	(09-70-1503	-X-1-609-A;	75-0473)
Budget Authority		353,860	30,078
Outlays		219,422	18,651
Community services block grant	(09-70-1504	-X-1-506-A;	75-1504)
Budget Authority		422,048	35,874
Outlays		289,937	24,645
Work incentives	(09-70-1505	-X-1-504-A;	75-1639)
Budget Authority		131,292	11,160
Outlays		116,713	9,921
Interim assistance to States for legalization	(09-70-1508	-X-1-506-A;	75-1508)
401(C) Authority		930,000	79,050
401(C) Other--incl. ob. limit		300,000	25,500
Outlays		300,000	25,500
Payments to States from receipts for child support	(09-70-5734	-X-2-609-A;	75-5734)
401(C) Other--incl. ob. limit		450	38
Outlays		337	29
<u>Human Development Services</u>			
Social services block grant	(09-80-1634	-X-1-506-A;	75-1634)
401(C) Authority		2,700,000	229,500
Outlays		2,637,227	224,164
Human development services	(09-80-1636	-X-1-506-A;	75-1636)
Budget Authority		2,190,469	186,190
Outlays		1,286,187	109,326
Family social services	(09-80-1645	-X-1-506-A;	75-1645)
401(C) Authority		289,127	24,576
401(C) Authority--Spec. Rules		11,611	11,611
Outlays		226,305	27,357

\*\* \$1,329 thousand of budgetary resource sequester shown under Program administration (09-70-1500) is to be applied against child support enforcement under Family support payments to States (09-70-1501) due to the application of a special rule under the Act.



Account Title		Base	Sequester
<u>Departmental Management</u>			
General Departmental management	(09-90-0120)	-X-1-609-A;	75-0120)
Budget Authority		131,765	11,200
Outlays		112,001	9,520
Policy research	(09-90-0122)	-X-1-609-A;	75-0122)
Budget Authority		8,563	728
Outlays		5,138	437
Office of the Inspector General	(09-90-0128)	-X-1-609-A;	75-0128)
Budget Authority		32,765	2,785
Outlays		26,212	2,228
Office for Civil Rights	(09-90-0135)	-X-1-751-A;	75-0135)
Budget Authority		16,751	1,424
Outlays		15,243	1,296
Office of Consumer Affairs	(09-90-0137)	-X-1-506-A;	75-0137)
Budget Authority		1,880	160
Outlays		1,751	149
Department of Health and Human Services	Total		
Budget Authority		15,773,498	1,340,748
Budget Authority--Spec. Rules		27,913	27,913
401(C) Authority		5,811,940	494,015
401(C) Authority--Off. Coll.		53,272	4,528
401(C) Other--incl. ob. limit		300,450	25,538
401(C) Authority--Spec. Rules		1,232,300	1,232,300
Direct Loan Limitation		1,042	89
Obligation Limitation		2,192,017	186,322
Outlays		17,505,047	2,633,655
<u>Health and Human Services - Social Security</u>			
<u>Social Security</u>			
Federal old-age and survivors insurance trust fund	(16-05-8006)	-X-7-651-A;	20-8006)
Obligation Limitation		1,678,544	142,676
Outlays		1,510,691	128,409
Federal disability insurance trust fund	(16-05-8007)	-X-7-651-A;	20-8007)
Obligation Limitation		546,377	46,442
Outlays		453,493	38,547
Health and Human Services - Social Security	Total		
Obligation Limitation		2,224,921	189,118
Outlays		1,964,184	166,956
<u>Department of Housing and Urban Development</u>			
<u>Housing Programs</u>			
Housing counseling assistance	(25-02-0156)	-X-1-506-A;	86-0156)
Budget Authority		3,647	310
Subsidized housing programs (Community development)	(25-02-0164)	-X-1-451-A;	86-0164)
Budget Authority		332,971	28,303
Outlays		20,846	1,772
Subsidized housing programs (Housing assistance)	(25-02-0164)	-X-1-604-A;	86-0164)
Budget Authority		7,857,845	667,917
Outlays		20,228	1,719
Congregate services program	(25-02-0178)	-X-1-604-A;	86-0178)
Budget Authority		3,543	301
Shelter programs	(25-02-0181)	-X-1-604-A;	86-0181)
Budget Authority		166,720	14,171
Outlays		51,056	4,340
Rental housing assistance fund	(25-02-4041)	-X-3-604-A;	86-4041)
401(C) Authority--Off. Coll.		60,000	5,100
Outlays		60,000	5,100
Nonprofit sponsor assistance	(25-02-4042)	-X-3-604-A;	86-4042)
Direct Loan Limitation		1,042	89
Federal Housing Administration fund	(25-02-4070)	-X-3-371-A;	86-4070)
401(C) Authority--Off. Coll.		360,616	30,652
Direct Loan Limitation		76,800	6,536
Guaranteed Loan Limitation		104,200,000	8,857,000
Obligation Limitation		334,555	28,437
Outlays		695,171	59,090
Housing for the elderly or handicapped fund	(25-02-4115)	-X-3-371-A;	86-4115)
Budget Authority		4,071	346
Direct Loan Limitation		617,553	52,492
Outlays		4,071	346
Interstate land sales	(25-02-5270)	-X-2-376-A;	86-5270)
401(C) Authority		800	68
Outlays		800	68
Manufactured home inspection and monitoring	(25-02-5271)	-X-2-376-A;	86-5271)
401(C) Authority		5,760	490
Outlays		4,452	378
<u>Public and Indian Housing Programs</u>			
Payments for operation of low income housing projects	(25-03-0163)	-X-1-604-A;	86-0163)
Budget Authority		1,406,700	119,570
Outlays		590,814	50,219



Account Title	Base	Sequester
<u>Government National Mortgage Association</u>		
Payment of participation sales insufficiencies	(25-04-0145 -X-1-371-A;	86-0145)
Budget Authority	1,124	96
Guarantees of mortgage-backed securities	(25-04-4238 -X-3-371-A;	86-4238)
401(C) Authority--Off. Coll.	39,084	3,322
Guaranteed Loan Limitation	156,300,000	13,285,500
Outlays	39,084	3,322
<u>Solar Energy and Energy Conservation Bank</u>		
Assistance for solar and conservation improvements	(25-05-0179 -X-1-272-A;	86-0179)
Budget Authority	625	53
<u>Community Planning and Development</u>		
Community development grants	(25-06-0162 -X-1-451-A;	86-0162)
Budget Authority	3,126,000	265,710
Guaranteed Loan Limitation	156,300	13,286
Outlays	62,520	5,314
Urban development action grants	(25-06-0170 -X-1-451-A;	86-0170)
Budget Authority	234,450	19,928
Outlays	11,722	996
Urban homesteading	(25-06-0171 -X-1-451-A;	86-0171)
Budget Authority	12,504	1,063
Outlays	10,420	886
Rehabilitation loan fund	(25-06-4036 -X-3-451-A;	86-4036)
401(C) Authority--Off. Coll.	23,044	1,959
Direct Loan Limitation	88,570	7,528
Outlays	67,344	5,724
<u>Policy Development and Research</u>		
Research and technology	(25-28-0108 -X-1-451-A;	86-0108)
Budget Authority	17,714	1,506
Outlays	5,314	452
<u>Fair Housing and Equal Opportunity</u>		
Fair housing assistance	(25-29-0144 -X-1-751-A;	86-0144)
Budget Authority	6,607	562
Outlays	1,354	115
<u>Management and Administration</u>		
Salaries & expenses, incl. transfer of funds (Communit	(25-35-0143 -X-1-451-A;	86-0143)
Budget Authority	184,030	15,643
Outlays	153,665	13,062
Salaries & expenses, incl. transfer of funds (Public a	(25-35-0143 -X-1-604-A;	86-0143)
Budget Authority	171,786	14,602
Outlays	143,452	12,193
Salaries & expenses, incl. transfer of funds (Federal	(25-35-0143 -X-1-751-A;	86-0143)
Budget Authority	15,212	1,293
Outlays	12,702	1,080
<u>Department of Housing and Urban Development</u>		
Budget Authority	13,545,549	1,151,374
401(C) Authority	6,560	558
401(C) Authority--Off. Coll.	482,744	41,033
Direct Loan Limitation	784,065	66,645
Guaranteed Loan Limitation	260,656,300	22,155,786
Obligation Limitation	334,555	28,437
Outlays	1,955,015	166,176
<u>Department of the Interior</u>		
<u>Bureau of Land Management</u>		
Management of lands and resources	(10-04-1109 -X-1-302-A;	14-1109)
Budget Authority	524,828	44,610
401(C) Authority--Off. Coll.	2,000	170
Outlays	438,508	37,273
Construction and access	(10-04-1110 -X-1-302-A;	14-1110)
Budget Authority	2,991	254
Outlays	2,991	254
Payments in lieu of taxes	(10-04-1114 -X-1-852-A;	14-1114)
Budget Authority	109,410	9,300
Outlays	109,410	9,300
Oregon and California grant lands	(10-04-1116 -X-1-302-A;	14-1116)
Budget Authority	58,965	5,012
Outlays	44,225	3,759
Special acquisition of lands and minerals	(10-04-1117 -X-1-302-A;	14-1117)
401(C) Authority	1,300	110
Service charges, deposits, and forfeitures	(10-04-5017 -X-2-302-A;	14-5017)
Budget Authority	7,685	653
Outlays	5,442	463
Land acquisition	(10-04-5033 -X-2-302-A;	14-5033)
Budget Authority	6,502	553
Outlays	1,491	127
Operation and maintenance of quarters	(10-04-5048 -X-2-302-A;	14-5048)
401(C) Authority	250	21
Outlays	210	18



Account Title		Base	Sequester
Range improvements	(10-04-5132)	-X-2-302-A;	14-5132)
Budget Authority		9,894	841
Outlays		5,823	495
Miscellaneous permanent appropriations	(10-04-9921)	-X-2-302-A;	14-9921)
401(C) Other--incl. ob. limit		5,600	476
Outlays		4,100	348
Misc. permanent appropriations (Otr. gen. pur. fiscal	(10-04-9921)	-X-2-852-A;	14-9921)
401(C) Other--incl. ob. limit		78,456	6,669
Minerals Management Service	(10-06-1917)	-X-1-302-A;	14-1917)
Minerals and royalty management		173,739	14,768
Budget Authority		118,142	10,042
Outlays		-X-2-852-A;	14-5003)
Payments to states from receipts under Mineral Leasing	(10-06-5003)	439,035	37,318
401(C) Other--incl. ob. limit		439,035	37,318
Outlays			
Office of Surface Mining Reclamation & Enforcement			
Regulation and technology	(10-08-1801)	-X-1-302-A;	14-1801)
Budget Authority		106,205	9,027
Outlays		71,623	6,088
Abandoned mine reclamation fund	(10-08-5015)	-X-2-302-A;	14-5015)
Budget Authority		213,203	18,122
Outlays		69,362	5,896
Bureau of Reclamation			
Loan program	(10-10-0667)	-X-1-301-A;	14-0667)
Budget Authority		39,108	3,324
Direct Loan Limitation		45,646	3,880
Outlays		39,108	3,324
Construction program	(10-10-0684)	-X-1-301-A;	14-0684)
Budget Authority		635,707	54,035
Outlays		558,272	47,453
Lower Colorado River basin development fund	(10-10-4079)	-X-3-301-A;	14-4079)
401(C) Authority--Off. Coll.		100,798	8,568
Outlays		100,798	8,568
Upper Colorado River basin fund	(10-10-4081)	-X-3-301-A;	14-4081)
401(C) Authority--Off. Coll.		41,485	3,526
Outlays		41,485	3,526
Working capital fund	(10-10-4524)	-X-4-301-A;	14-4524)
Budget Authority		6,669	567
Outlays		761	65
Emergency fund	(10-10-5043)	-X-2-301-A;	14-5043)
Budget Authority		1,042	89
Outlays		753	64
General investigations	(10-10-5060)	-X-2-301-A;	14-5060)
Budget Authority		31,546	2,681
401(C) Authority--Off. Coll.		50	4
Outlays		22,892	1,846
Operation and maintenance	(10-10-5064)	-X-2-301-A;	14-5064)
Budget Authority		150,457	12,789
401(C) Authority--Off. Coll.		8,000	680
Outlays		137,289	11,670
General administrative expenses	(10-10-5065)	-X-2-301-A;	14-5065)
Budget Authority		55,414	4,710
Outlays		51,192	4,351
Colorado River Dam Fund, Boulder Canyon Project	(10-10-5656)	-X-2-301-A;	14-5656)
401(C) Other--incl. ob. limit		55,814	4,744
Outlays		44,983	3,824
Reclamation trust funds	(10-10-8070)	-X-7-301-A;	14-8070)
401(C) Other--incl. ob. limit		48,000	4,080
Outlays		45,140	3,837
Miscellaneous permanent appropriations	(10-10-9922)	-X-2-852-A;	14-9922)
401(C) Other--incl. ob. limit		287	24
Outlays		287	24
Geological Survey			
Surveys, investigations and research	(10-12-0804)	-X-1-306-A;	14-0804)
Budget Authority		457,082	38,852
401(C) Authority--Off. Coll.		73,333	6,233
Outlays		514,502	43,733
Bureau of Mines			
Mines and minerals	(10-14-0959)	-X-1-306-A;	14-0959)
Budget Authority		148,940	12,660
Outlays		99,194	8,431
Helium fund	(10-14-4053)	-X-3-306-A;	14-4053)
401(C) Authority--Off. Coll.		3,674	312
Outlays		3,674	312
United States Fish and Wildlife Service			
Resource management	(10-18-1611)	-X-1-303-A;	14-1611)
Budget Authority		343,368	29,186
401(C) Authority--Off. Coll.		2,392	203
Outlays		251,274	21,358



Account Title		Base	Sequester
Construction			
Budget Authority	(10-18-1612)	-X-1-303-A; 14-1612)	
Outlays		43,305	3,681
Land acquisition		9,095	773
Budget Authority	(10-18-5020)	-X-2-303-A; 14-5020)	
Outlays		50,357	4,280
Operations and maintenance of quarters		9,624	818
401(C) Other--incl. ob. limit	(10-18-5050)	-X-2-303-A; 14-5050)	
Outlays		1,662	141
National wildlife refuge fund		363	31
Budget Authority	(10-18-5091)	-X-2-852-A; 14-5091)	
401(C) Other--incl. ob. limit		5,910	502
Outlays		7,040	598
Migratory bird conservation account		7,768	660
Budget Authority	(10-18-5137)	-X-2-303-A; 14-5137)	
401(C) Other--incl. ob. limit		7,372	627
Outlays		31,878	2,710
Sport fish restoration		26,623	2,263
401(C) Other--incl. ob. limit	(10-18-8151)	-X-7-303-A; 14-8151)	
Outlays		174,000	14,790
Contributed funds		50,359	4,281
401(C) Other--incl. ob. limit	(10-18-8216)	-X-7-303-A; 14-8216)	
Outlays		140	12
Miscellaneous permanent appropriations		140	12
401(C) Other--incl. ob. limit	(10-18-9923)	-X-2-303-A; 14-9923)	
Outlays		114,200	9,707
National Park Service		38,972	3,313
Operation of the national park system			
Budget Authority	(10-24-1036)	-X-1-303-A; 14-1036)	
401(C) Authority--Off. Coll.		749,559	63,713
Outlays		2,214	188
John F. Kennedy Center for the Performing Arts		602,061	51,175
Budget Authority	(10-24-1038)	-X-1-303-A; 14-1038)	
Outlays		5,101	434
Construction		3,571	304
Budget Authority	(10-24-1039)	-X-1-303-A; 14-1039)	
401(C) Authority--Off. Coll.		92,774	7,886
Outlays		8,500	722
National recreation and preservation		23,663	2,011
Budget Authority	(10-24-1042)	-X-1-303-A; 14-1042)	
Outlays		11,664	991
Illinois & Michigan Canal National Heritage-Corridor C		9,330	793
Budget Authority	(10-24-1043)	-X-1-303-A; 14-1043)	
Outlays		266	23
Jefferson National Expansion Memorial Commission		132	11
Budget Authority	(10-24-1044)	-X-1-303-A; 14-1044)	
Outlays		80	7
Land acquisition		80	7
Budget Authority	(10-24-5035)	-X-2-303-A; 14-5035)	
401(C) Authority		115,134	9,786
401(C) Authority--Off. Coll.		30,000	2,550
Outlays		1,500	128
Operations and maintenance of quarters		58,173	4,945
401(C) Other--incl. ob. limit	(10-24-5049)	-X-2-303-A; 14-5049)	
Outlays		8,722	741
Historic preservation fund		7,400	629
Budget Authority	(10-24-5140)	-X-2-303-A; 14-5140)	
Outlays		25,268	2,148
Miscellaneous permanent appropriations		9,877	840
401(C) Other--incl. ob. limit	(10-24-9924)	-X-2-303-A; 14-9924)	
Outlays		1,045	89
Bureau of Indian Affairs		263	22
Operation of Indian programs (Conservation and land ma	(10-76-2100)	-X-1-302-A; 14-2100)	
Budget Authority		151,796	12,903
Outlays		129,174	10,980
Operation of Indian programs (Area and regional develo	(10-76-2100)	-X-1-452-A; 14-2100)	
Budget Authority		542,329	46,098
401(C) Authority--Off. Coll.		3,000	255
Outlays		466,175	39,625
Operation of Indian programs (Elementary, secondary, &	(10-76-2100)	-X-1-501-A; 14-2100)	
Budget Authority		289,699	24,624
Outlays		250,905	21,327
Payment to the White Earth econ. dev. and tribal gover	(10-76-2204)	-X-1-452-A; 14-2364)	
Budget Authority		6,877	585
Outlays		6,877	585
Construction			
Budget Authority	(10-76-2301)	-X-1-452-A; 14-2301)	
Outlays		92,668	7,877
		24,810	2,109



Account Title		Base	Sequester
Road construction	(10-76-2364	-X-1-452-A;	14-2364)
401(C) Authority--Off. Coll.		1,000	85
Outlays		1,000	85
Revolving fund for loans	(10-76-4409	-X-3-452-A;	14-4409)
Direct Loan Limitation		17,005	1,445
Outlays		13,546	1,151
Indian loan guaranty and insurance fund	(10-76-4410	-X-3-452-A;	14-4410)
Budget Authority		2,555	217
Direct Loan Limitation		104	9
Guaranteed Loan Limitation		34,907	2,967
Outlays		1,440	122
Operations and maintenance of quarters	(10-76-5051	-X-2-452-A;	14-5051)
401(C) Other--incl. ob. limit		8,000	680
Outlays		2,800	238
Miscellaneous permanent appropriations (Area and regio	(10-76-9925	-X-2-452-A;	14-9925)
401(C) Other--incl. ob. limit		47,001	3,995
Outlays		13,932	1,184
Miscellaneous permanent appropriations (Other general	(10-76-9925	-X-2-806-A;	14-9925)
401(C) Authority		2,000	170
Outlays		1,975	168
Office of Territorial Affairs			
Administration of territories	(10-82-0412	-X-1-806-A;	14-0412)
Budget Authority		45,777	3,891
Outlays		44,875	3,814
Trust Territory of the Pacific Islands	(10-82-0414	-X-1-806-A;	14-0414)
Budget Authority		70,217	5,968
Outlays		47,380	4,027
Office of the Secretary			
Salaries and Expenses	(10-84-0102	-X-1-306-A;	14-0102)
Budget Authority		46,373	3,942
Outlays		43,173	3,670
Construction management	(10-84-0103	-X-1-306-A;	14-0103)
Budget Authority		746	63
Outlays		705	60
Office of the Solicitor			
Office of the Solicitor	(10-86-0107	-X-1-306-A;	14-0107)
Budget Authority		22,806	1,939
Outlays		21,894	1,861
Office of Inspector General			
Office of Inspector General	(10-88-0104	-X-1-306-A;	14-0104)
Budget Authority		17,788	1,512
Outlays		15,795	1,343
Operation and maintenance of quarters	(10-88-5052	-X-2-306-A;	14-5052)
401(C) Authority		52	4
Outlays		36	3
Department of the Interior	Total		
Budget Authority		5,479,176	465,730
401(C) Authority		33,602	2,855
401(C) Authority--Off. Coll.		247,946	21,074
401(C) Other--incl. ob. limit		1,020,880	86,774
Direct Loan Limitation		62,755	5,334
Guaranteed Loan Limitation		34,907	2,967
Outlays		5,165,952	439,107
Department of Justice			
General Administration			
Salaries and expenses	(11-03-0129	-X-1-751-A;	15-0129)
Budget Authority		80,696	6,859
Outlays		60,037	5,103
United States Parole Commission			
Salaries and expenses	(11-04-1061	-X-1-751-A;	15-1061)
Budget Authority		11,174	950
Outlays		10,670	907
Legal Activities			
Salaries and expenses, Foreign Claims Settlement Commi	(11-05-0100	-X-1-153-A;	15-0100)
Budget Authority		612	52
Outlays		557	47
Salaries and expenses, General legal activities	(11-05-0128	-X-1-752-A;	15-0128)
Budget Authority		234,642	19,945
Outlays		184,252	15,661
Fees and expenses of witnesses	(11-05-0311	-X-1-752-A;	15-0311)
Budget Authority		54,379	4,622
Outlays		52,149	4,433
Salaries and expenses, Antitrust Division	(11-05-0319	-X-1-752-A;	15-0319)
Budget Authority		46,691	3,969
Outlays		33,138	2,817
Salaries and expenses, United States Attorneys	(11-05-0322	-X-1-752-A;	15-0322)
Budget Authority		381,393	32,418
Outlays		329,905	28,042



Account Title		Base	Sequester
Salaries and expenses, United States Marshals Service	(11-05-0324	-X-1-752-A;	15-0324)
Budget Authority		172,478	14,661
401(C) Authority--Off. Coll.		660	56
Outlays		149,681	12,723
Salaries and expenses, Community Relations Service	(11-05-0500	-X-1-752-A;	15-0500)
Budget Authority		31,213	2,653
Outlays		21,381	1,817
Support of United States prisoners	(11-05-1020	-X-1-752-A;	15-1020)
Budget Authority		72,554	6,167
Outlays		39,179	3,330
Assets forfeiture fund	(11-05-5042	-X-2-752-A;	15-5042)
Budget Authority		133,376	11,337
Outlays		5,735	487
United States trustees system fund	(11-05-5073	-X-2-752-A;	15-5073)
Budget Authority		25,146	2,137
Outlays		23,889	2,031
Federal Bureau of Investigation			
Salaries and expenses	(11-10-0200	-X-1-751-A;	15-0200)
Budget Authority		1,370,509	116,493
401(C) Authority--Off. Coll.		45,311	3,851
Outlays		1,073,192	91,221
Drug Enforcement Administration			
Salaries and expenses	(11-12-1100	-X-1-751-A;	15-1100)
Budget Authority		515,807	43,844
401(C) Authority--Off. Coll.		850	72
Outlays		408,337	34,709
Immigration and Naturalization Service			
Salaries and expenses	(11-15-1217	-X-1-751-A;	15-1217)
Budget Authority		787,892	66,971
401(C) Authority--Off. Coll.		3,686	313
Outlays		544,180	46,255
Immigration legalization	(11-15-5086	-X-2-751-A;	15-1217)
401(C) Authority		180,692	15,359
Outlays		168,668	14,337
Immigration user fee	(11-15-5087	-X-2-751-A;	15-1217)
401(C) Authority		74,000	6,290
Outlays		74,000	6,290
Federal Prison System			
Buildings and facilities	(11-20-1003	-X-1-753-A;	15-1003)
Budget Authority		228,423	19,416
Outlays		44,459	3,779
National Institute of Corrections	(11-20-1004	-X-1-754-A;	15-1004)
Budget Authority		9,495	807
Outlays		2,391	203
Salaries and expenses	(11-20-1060	-X-1-753-A;	15-1060)
Budget Authority		676,683	57,518
401(C) Authority--Off. Coll.		12,671	1,077
Outlays		590,299	50,175
Federal Prison Industries, Incorporated	(11-20-4500	-X-4-753-A;	15-4500)
Obligation Limitation		2,551	217
Outlays		2,551	217
Office of Justice Programs			
Justice assistance	(11-21-0401	-X-1-754-A;	15-0401)
Budget Authority		434,026	36,892
Outlays		65,104	5,534
Crime Victims Fund	(11-21-5041	-X-2-754-A;	15-5041)
401(C) Other--incl. ob. limit		80,000	6,800
Obligation Limitation		66,688	5,668
Outlays		2,271	193
Department of Justice	Total		
Budget Authority		5,267,189	447,711
401(C) Authority		254,692	21,649
401(C) Authority--Off. Coll.		63,178	5,369
401(C) Other--incl. ob. limit		80,000	6,800
Obligation Limitation		69,239	5,885
Outlays		3,886,025	330,311
Department of Labor			
Employment and Training Administration			
Program administration	(12-05-0172	-X-1-504-A;	16-0172)
Budget Authority		73,095	6,213
Outlays		62,510	5,313
Training and employment services	(12-05-0174	-X-1-504-A;	16-0174)
Budget Authority		3,864,693	328,499
Outlays		102,239	8,690
Community service employment for older Americans	(12-05-0175	-X-1-504-A;	16-0175)
Budget Authority		350,112	29,760
Outlays		70,022	5,852



Account Title		Base	Sequester
State unemployment insurance and employment services	(12-05-0179)	-X-1-504-A; 16-0179)	
Budget Authority		24,383	2,073
Outlays		5,460	464
Federal unemployment benefits and allowances	(12-05-0326)	-X-1-603-A; 16-0326)	
401(C) Authority		159,000	13,515
Outlays		158,000	13,430
Unemployment trust fund (Training and employment)	(12-05-8042)	-X-7-504-A; 20-8042)	
Obligation Limitation		991,692	84,294
Outlays		367,012	31,196
Unemployment trust fund (Unemployment compensation)	(12-05-8042)	-X-7-603-A; 20-8042)	
401(C) Other--incl. ob. limit		191,200	16,252
Obligation Limitation		1,773,542	150,751
Outlays		1,964,742	167,003
<u>Labor-Management Services</u>			
Salaries and expenses	(12-10-0104)	-X-1-505-A; 16-0104)	
Budget Authority		67,481	5,736
Outlays		58,752	4,994
<u>Pension Benefit Guaranty Corporation</u>			
Pension Benefit Guaranty Corporation fund	(12-12-4204)	-X-3-601-A; 16-4204)	
Obligation Limitation		39,683	3,373
Outlays		34,246	2,911
<u>Employment Standards Administration</u>			
Salaries and expenses	(12-15-0105)	-X-1-505-A; 16-0105)	
Budget Authority		207,642	17,650
401(C) Authority--Off. Coll.		1,000	85
Outlays		179,675	15,272
Black lung disability trust fund	(12-15-8144)	-X-7-601-A; 20-8144)	
Budget Authority		53,678	4,563
Outlays		53,678	4,563
Special workers' compensation expenses	(12-15-9971)	-X-7-601-A; 16-9971)	
Obligation Limitation		459	39
Outlays		459	39
<u>Occupational Safety and Health Administration</u>			
Salaries and expenses	(12-18-0400)	-X-1-554-A; 16-0400)	
Budget Authority		241,078	20,492
Outlays		217,675	18,502
<u>Mine Safety and Health Administration</u>			
Salaries and expenses	(12-19-1200)	-X-1-554-A; 16-1200)	
Budget Authority		170,558	14,497
Outlays		156,544	13,306
<u>Bureau of Labor Statistics</u>			
Salaries and expenses	(12-20-0200)	-X-1-505-A; 16-0200)	
Budget Authority		179,038	15,218
401(C) Authority--Off. Coll.		626	53
Outlays		160,433	13,637
<u>Departmental Management</u>			
Inspector General salaries and expenses	(12-25-0106)	-X-1-505-A; 16-0106)	
Budget Authority		38,194	3,246
Outlays		29,479	2,506
Special foreign currency program	(12-25-0151)	-X-1-505-A; 16-0151)	
Budget Authority		49	4
Outlays		49	4
Salaries and expenses	(12-25-0165)	-X-1-505-A; 16-0165)	
Budget Authority		118,570	10,078
Outlays		103,500	8,798
Department of Labor	Total		
Budget Authority		5,388,571	458,029
401(C) Authority		159,000	13,515
401(C) Authority--Off. Coll.		1,626	138
401(C) Other--incl. ob. limit		191,200	16,252
Obligation Limitation		2,805,376	238,457
Outlays		3,724,475	316,580
<u>Department of State</u>			
Administration of Foreign Affairs	(14-05-0113)	-X-1-153-A; 19-0113)	
Salaries and expenses		1,692,551	143,867
Budget Authority		1,502,985	127,754
Outlays			
Protection of foreign missions and officials	(14-05-0520)	-X-1-153-A; 19-0520)	
Budget Authority		9,482	806
Outlays		6,897	595
Emergencies in the diplomatic and consular service	(14-05-0522)	-X-1-153-A; 19-0522)	
Budget Authority		4,168	354
Direct Loan Limitation		729	62
Outlays		4,168	354
Payment to the American Institute in Taiwan	(14-05-0523)	-X-1-153-A; 19-0523)	
Budget Authority		9,773	831
Outlays		8,150	693



Account Title		Base	Sequester
Acquisition and maintenance of buildings abroad	(14-05-0535	-X-1-153-A;	19-0535)
Budget Authority		469,380	39,897
401(C) Authority--Off. Coll.		4,000	340
Outlays		39,672	3,372
Representation allowances	(14-05-0545	-X-1-153-A;	19-0545)
Budget Authority		4,647	395
Outlays		4,001	340
<u>International Organizations and Conferences</u>			
Contributions for international peacekeeping activities	(14-10-1124	-X-1-153-A;	19-1124)
Budget Authority		30,635	2,604
Outlays		30,390	2,583
International conferences and contingencies	(14-10-1125	-X-1-153-A;	19-1125)
Budget Authority		5,696	484
Outlays		3,246	276
Contributions to international organizations	(14-10-1126	-X-1-153-A;	19-1126)
Budget Authority		401,450	34,123
401(C) Authority--Off. Coll.		3,950	336
Outlays		413,429	35,141
<u>International Commissions</u>			
Salaries and expenses, IBWC	(14-15-1069	-X-1-301-A;	19-1069)
Budget Authority		11,735	997
401(C) Authority--Off. Coll.		72	6
Outlays		10,047	854
Construction, IBWC	(14-15-1078	-X-1-301-A;	19-1078)
Budget Authority		4,086	347
Outlays		817	69
American sections, international commissions	(14-15-1082	-X-1-301-A;	19-1082)
Budget Authority		4,489	382
Outlays		3,300	280
International fisheries commissions	(14-15-1087	-X-1-302-A;	19-1087)
Budget Authority		11,254	957
Outlays		10,398	884
<u>Other</u>			
United States emergency refugee and migration assistance	(14-25-0040	-X-1-151-A;	11-0040)
Budget Authority		14,588	1,240
Anti-terrorism assistance	(14-25-0114	-X-1-152-A;	19-0114)
Budget Authority		10,253	872
Outlays		6,601	561
Soviet-East European research and training	(14-25-0118	-X-1-153-A;	19-0118)
Budget Authority		4,793	407
Outlays		2,468	210
Payment to the Asia Foundation	(14-25-0525	-X-1-153-A;	19-0525)
Budget Authority		9,170	779
Outlays		9,170	779
International narcotics control	(14-25-1022	-X-1-151-A;	11-1022)
Budget Authority		123,667	10,512
Outlays		24,733	2,102
Migration and refugee assistance	(14-25-1143	-X-1-151-A;	19-1143)
Budget Authority		361,785	30,752
Outlays		235,160	19,989
U.S. bilateral science and technology agreements	(14-25-1151	-X-1-153-A;	19-1151)
Budget Authority		1,980	168
Outlays		1,980	168
Fisherman's guaranty fund	(14-25-5121	-X-2-376-A;	19-5121)
Budget Authority		1,877	160
Outlays		1,877	160
International Center, Washington, D.C.	(14-25-5151	-X-2-153-A;	19-5151)
401(C) Authority		945	80
Outlays		945	80
Department of State	Total		
Budget Authority		3,187,459	270,934
401(C) Authority		945	80
401(C) Authority--Off. Coll.		8,022	682
Direct Loan Limitation		729	62
Outlays		2,320,534	197,244
<u>Department of Transportation</u>			
<u>Federal Highway Administration</u>			
Access highways to public recreation areas on certain	(21-05-0503	-X-1-401-A;	69-0503)
Budget Authority		5,210	443
Outlays		1,042	89
Motor carrier safety	(21-05-0552	-X-1-401-A;	69-0552)
Budget Authority		21,173	1,800
Outlays		18,406	1,565
Railroad-highway crossings demonstration projects	(21-05-0557	-X-1-401-A;	69-0557)
Budget Authority		4,081	347
Outlays		816	69
Waste isolation pilot projects roads	(21-05-0562	-X-1-401-A;	69-0562)
Budget Authority		10,420	886
Outlays		2,084	177



Account Title		Base	Sequester
Expressway gap closing demonstration project	(21-05-0563	-X-1-401-A;	69-0563)
Budget Authority		6,460	549
Outlays		1,292	110
Trust fund share of other highway programs	(21-05-8009	-X-7-401-A;	69-8009)
Budget Authority		8,162	694
Outlays		1,633	139
Baltimore-Washington Parkway	(21-05-8014	-X-7-401-A;	69-8014)
Budget Authority		10,420	886
Outlays		2,084	177
Highway safety research and development	(21-05-8017	-X-7-401-A;	69-8017)
Budget Authority		7,294	620
Outlays		1,459	124
Highway-related safety grants	(21-05-8019	-X-7-401-A;	69-8019)
401(C) Authority		10,000	850
401(C) Other--incl. ob. limit		10,000	850
Outlays		2,000	170
Motor carrier safety grants	(21-05-8027	-X-7-401-A;	69-8027)
401(C) Authority		50,000	4,250
Outlays		12,791	1,087
Federal-aid highways	(21-05-8083	-X-7-401-A;	20-8102)
401(C) Authority		13,702,429	1,164,706
401(C) Authority--Off. Coll.		20,213	1,718
401(C) Other--incl. ob. limit		12,350,000	1,049,750
Outlays		2,236,713	190,121
Right-of-way revolving fund (trust revolving fund)	(21-05-8402	-X-8-401-A;	69-8402)
Direct Loan Limitation		49,860	4,238
Outlays		49,860	4,238
Miscellaneous appropriations	(21-05-9911	-X-1-401-A;	69-9911)
Budget Authority		1,866	167
Outlays		393	33
Miscellaneous trust funds--Highway	(21-05-9972	-X-7-401-A;	69-9972)
Budget Authority		52,934	4,499
Outlays		10,587	800
<u>National Highway Traffic Safety Administration</u>			
Operations and research	(21-10-0650	-X-1-401-A;	69-0650)
Budget Authority		58,511	4,973
Outlays		41,078	3,492
Trust fund share of operations and research	(21-10-8016	-X-7-401-A;	69-8016)
Budget Authority		36,101	3,069
Outlays		21,634	1,839
State and community highway safety grants	(21-10-8020	-X-7-401-A;	69-8020)
401(C) Authority		126,000	10,710
401(C) Other--incl. ob. limit		142,150	12,083
Outlays		61,664	5,241
<u>Federal Railroad Administration</u>			
Northeast corridor improvement program	(21-16-0123	-X-1-401-A;	69-0123)
Budget Authority		17,674	1,502
Outlays		1,061	90
Office of the Administrator	(21-16-0700	-X-1-401-A;	69-0700)
Budget Authority		24,718	2,101
Outlays		17,145	1,457
Railroad safety	(21-16-0702	-X-1-401-A;	69-0702)
Budget Authority		39,308	3,341
Outlays		31,101	2,644
Grants to National Railroad Passenger Corporation	(21-16-0704	-X-1-401-A;	69-0704)
Budget Authority		619,772	52,681
Outlays		619,772	52,681
Settlements of railroad litigation	(21-16-0708	-X-1-401-A;	69-0708)
401(C) Authority		5,214	443
Commuter rail service	(21-16-0747	-X-1-401-A;	69-0747)
Budget Authority		5,210	443
Outlays		5,210	443
Railroad rehabilitation and improvement financing fund	(21-16-4411	-X-3-401-A;	69-4411)
Budget Authority		8,329	708
Direct Loan Limitation		6,773	576
Outlays		339	29
<u>Urban Mass Transportation Administration</u>			
Urban mass transportation fund, administrative expense	(21-20-1120	-X-1-401-A;	69-1120)
Budget Authority		33,722	2,866
Outlays		30,134	2,561
Research, training and human resources	(21-20-1121	-X-1-401-A;	69-1121)
Budget Authority		18,131	1,541
Outlays		8,159	694
Interstate transfer grants	(21-20-1127	-X-1-401-A;	69-1127)
Budget Authority		208,400	17,714
Outlays		31,260	2,657
Washington metro	(21-20-1128	-X-1-401-A;	69-1128)
Budget Authority		209,567	17,813
Outlays		10,478	891



Account Title		Base	Sequester
Formula grants	(21-20-1129	-X-1-401-A;	69-1129)
Budget Authority		2,084,000	177,140
Outlays		776,766	66,025
Discretionary grants	(21-20-8191	-X-7-401-A;	69-8191)
401(C) Authority		1,200,000	102,000
Obligation Limitation		1,044,605	88,791
Outlays		104,460	8,879
<u>Federal Aviation Administration</u>			
Operations	(21-25-1301	-X-1-402-A;	69-1301)
Budget Authority		2,423,621	206,008
401(C) Authority--Off. Coll.		9,100	774
Outlays		2,118,770	180,095
Headquarters administration	(21-25-1302	-X-1-402-A;	69-1302)
Budget Authority		37,617	3,197
Outlays		29,281	2,489
Operation and maintenance, Metropolitan Washington Air	(21-25-1332	-X-1-402-A;	69-1332)
Budget Authority		25,342	2,154
Outlays		21,541	1,831
Aircraft purchase loan guarantee program	(21-25-1399	-X-1-402-A;	69-1399)
Budget Authority		753	64
Outlays		753	64
Trust fund share of FAA Operations	(21-25-8104	-X-7-402-A;	69-8104)
Budget Authority		676,974	57,543
Outlays		676,974	57,543
Grants-in-aid for airports (Airport and airway trust f	(21-25-8106	-X-7-402-A;	69-8106)
401(C) Authority		1,017,200	86,462
Obligation Limitation		1,068,050	90,784
Outlays		170,888	14,525
Facilities and equipment (Airport and airway trust fun	(21-25-8107	-X-7-402-A;	69-8107)
Budget Authority		841,096	71,493
401(C) Authority--Off. Coll.		3,600	306
Outlays		95,280	8,099
Research, engineering & development (Airport & airway	(21-25-8108	-X-7-402-A;	69-8108)
Budget Authority		149,466	12,705
401(C) Authority--Off. Coll.		600	51
Outlays		94,294	8,015
<u>Coast Guard</u>			
Operating expenses	(21-30-0201	-X-1-403-A;	69-0201)
Budget Authority		1,935,703	164,535
401(C) Authority--Off. Coll.		4,000	340
Outlays		1,481,306	125,911
Acquisition, construction, and improvements	(21-30-0240	-X-1-403-A;	69-0240)
Budget Authority		311,659	26,491
Outlays		54,376	4,622
Retired pay (Coast Guard)	(21-30-0241	-X-1-403-A;	69-0241)
401(C) Authority		37,600	3,196
Outlays		37,600	3,196
Reserve training	(21-30-0242	-X-1-403-A;	69-0242)
Budget Authority		70,583	6,000
Outlays		63,426	5,391
Research, development, test, and evaluation	(21-30-0243	-X-1-403-A;	69-0243)
Budget Authority		21,306	1,811
Outlays		10,534	895
Offshore oil pollution compensation fund	(21-30-5167	-X-2-304-A;	69-5167)
Budget Authority		1,042	89
Obligation Limitation		62,520	5,314
Pollution fund	(21-30-5168	-X-2-304-A;	69-5168)
401(C) Authority		5,300	450
Outlays		35	3
Deepwater port liability fund	(21-30-5170	-X-2-304-A;	69-5170)
Budget Authority		1,042	89
Obligation Limitation		52,100	4,428
Boat safety	(21-30-8149	-X-7-403-A;	69-8149)
Budget Authority		46,890	3,986
Obligation Limitation		31,260	2,657
Outlays		35,561	3,023
<u>Maritime Administration</u>			
Research and development	(21-35-1716	-X-1-403-A;	69-1716)
Budget Authority		3,647	310
Outlays		1,094	93
Operations and training	(21-35-1750	-X-1-403-A;	69-1750)
Budget Authority		68,651	5,835
Outlays		60,413	5,135
Federal ship financing fund	(21-35-4301	-X-3-403-A;	69-4301)
401(C) Authority--Off. Coll.		3,000	255
Guaranteed Loan Limitation		72,940	6,200
Outlays		3,000	255



Account Title		Base	Sequester
Saint Lawrence Seaway Development Corporation	(21-40-4089)	-X-3-403-A; 69-4089)	
Saint Lawrence Seaway Development Corporation		2,136	182
Budget Authority		800	68
401(C) Authority--Off. Coll.		2,120	180
Obligation Limitation		2,830	241
Outlays			
Operations and maintenance	(21-40-8003)	-X-7-403-A; 69-8003)	
Budget Authority		4,168	354
Outlays		3,960	337
Office of the Inspector General	(21-45-0130)	-X-1-407-A; 69-0130)	
Salaries and expenses		29,653	2,520
Budget Authority		24,629	2,093
Outlays			
Research and Special Programs Administration	(21-50-0104)	-X-1-407-A; 69-0104)	
Research and special programs		21,302	1,811
Budget Authority		14,715	1,251
Outlays			
Office of the Secretary	(21-55-0102)	-X-1-407-A; 69-0102)	
Salaries and expenses		55,340	4,704
Budget Authority		55,340	4,704
Outlays			
Transportation planning, research, and development	(21-55-0142)	-X-1-407-A; 69-0142)	
Budget Authority		3,578	304
Outlays		1,954	166
Payments to air carriers, DOT	(21-55-0150)	-X-1-402-A; 69-0150)	
Budget Authority		31,260	2,657
Outlays		25,325	2,153
Department of Transportation	Total		
Budget Authority		10,254,392	871,625
401(C) Authority		16,153,743	1,373,067
401(C) Authority--Off. Coll.		41,313	3,512
401(C) Other--incl. ob. limit		12,502,150	1,062,683
Direct Loan Limitation		56,633	4,814
Guaranteed Loan Limitation		72,940	6,200
Obligation Limitation		2,260,655	192,154
Outlays		9,185,300	780,752
Department of the Treasury			
Departmental Offices	(15-05-0101)	-X-1-803-A; 20-0101)	
Salaries and expenses		86,909	7,387
Budget Authority		4,342	369
401(C) Authority--Off. Coll.		71,555	6,082
Outlays			
Office of Revenue Sharing	(15-07-0107)	-X-1-851-A; 20-0107)	
Salaries and expenses		6,018	512
Budget Authority		5,771	491
Outlays			
Federal Law Enforcement Training Center	(15-08-0104)	-X-1-751-A; 20-0104)	
Salaries and expenses		31,526	2,680
Budget Authority		26,897	2,286
Outlays			
Financial Management Service	(15-10-1801)	-X-1-803-A; 20-1801)	
Salaries and expenses		256,681	21,818
Budget Authority		217,676	18,502
Outlays			
Saint Lawrence Seaway toll rebate program	(15-10-8865)	-X-1-806-A; 20-8865)	
Budget Authority		6,521	554
Outlays		6,521	554
Federal Financing Bank Activities	(15-11-4521)	-X-4-803-A; 20-4521)	
Federal Financing Bank		2,000	170
401(C) Authority--Off. Coll.		2,000	170
Outlays			
Bureau of Alcohol, Tobacco and Firearms	(15-13-1000)	-X-1-751-A; 20-1000)	
Salaries and expenses		215,067	18,281
Budget Authority		192,412	16,355
Outlays			
United States Customs Service	(15-15-0602)	-X-1-751-A; 20-0602)	
Salaries and expenses		902,432	76,707
Budget Authority		79,400	6,749
401(C) Authority		1,020,919	86,778
Outlays			
Operation and maintenance, air interdiction program	(15-15-0604)	-X-1-751-A; 20-0604)	
Budget Authority		173,837	14,776
Outlays		138,210	11,748
Payments to the Government of Puerto Rico	(15-15-0606)	-X-1-751-A; 20-0606)	
Budget Authority		8,128	691
Outlays		8,128	691
Customs forfeiture fund	(15-15-5693)	-X-2-803-A; 20-5693)	
Budget Authority		18,928	1,609
Outlays		18,928	1,609



Account Title		Base	Sequester
Customs services at small airports	(15-15-5694	-X-2-806-A;	20-5694)
401(C) Authority		487	41
Outlays		365	31
Refunds, transfers and expenses, unclaimed and seized	(15-15-8789	-X-7-803-A;	20-8789)
401(C) Authority		7,537	641
Outlays		7,537	641
Bureau of Engraving and Printing			
Bureau of Engraving and Printing fund	(15-20-4502	-X-4-803-A;	20-4502)
401(C) Authority--Off. Coll.		11,086	942
Outlays		11,086	942
United States Mint			
Salaries and expenses	(15-25-1616	-X-1-803-A;	20-1616)
Budget Authority		46,194	3,926
401(C) Authority--Off. Coll.		111,793	9,502
Outlays		153,986	13,089
Expansion and improvements	(15-25-9911	-X-1-803-A;	20-9911)
Budget Authority		723	61
Bureau of the Public Debt			
Administering the public debt	(15-35-0560	-X-1-803-A;	20-0560)
Budget Authority		211,072	17,941
Outlays		162,678	13,828
Internal Revenue Service			
Salaries and expenses	(15-45-0911	-X-1-803-A;	20-0911)
Budget Authority		96,380	8,192
Outlays		67,627	5,748
Processing tax returns and executive direction	(15-45-0912	-X-1-803-A;	20-0912)
Budget Authority		1,493,634	126,959
Outlays		1,221,552	103,832
Examinations and appeals	(15-45-0913	-X-1-803-A;	20-0913)
Budget Authority		1,798,319	152,857
Outlays		1,621,352	137,815
Investigation, collection, and taxpayer service	(15-45-0914	-X-1-803-A;	20-0914)
Budget Authority		1,311,893	111,511
Outlays		1,156,846	98,340
Federal tax lien revolving fund	(15-45-4413	-X-3-803-A;	20-4413)
401(C) Authority--Off. Coll.		6,780	576
Outlays		6,780	576
United States Secret Service			
Contribution for annuity benefits	(15-55-1407	-X-1-751-A;	20-1407)
401(C) Authority		15,000	1,275
Outlays		15,000	1,275
Salaries and expenses	(15-55-1408	-X-1-751-A;	20-1408)
Budget Authority		354,815	30,159
Outlays		272,964	23,202
Department of the Treasury	Total		
Budget Authority		7,019,077	596,621
401(C) Authority		102,424	8,706
401(C) Authority--Off. Coll.		136,001	11,559
Outlays		6,406,890	544,585
Environmental Protection Agency			
Environmental Protection Agency			
Construction grants	(20-00-0103	-X-1-304-A;	68-0103)
Budget Authority		2,460,162	209,114
Outlays		24,992	2,124
Research and development (Energy supply)	(20-00-0107	-X-1-271-A;	68-0107)
Budget Authority		56,426	4,796
Outlays		14,953	1,271
Research and development (Pollution control and abatem	(20-00-0107	-X-1-304-A;	68-0107)
Budget Authority		154,579	13,139
Outlays		40,963	3,482
Abatement, control, and compliance	(20-00-0108	-X-1-304-A;	68-0108)
Budget Authority		635,292	54,000
Direct Loan Limitation		37,357	3,175
Outlays		286,120	24,320
Buildings and facilities	(20-00-0110	-X-1-304-A;	68-0110)
Budget Authority		7,815	664
Outlays		1,804	153
Salaries and expenses	(20-00-0200	-X-1-304-A;	68-0200)
Budget Authority		774,623	65,843
401(C) Authority--Off. Coll.		1,800	153
Outlays		668,423	56,816
Advances to the hazardous substance superfund	(20-00-0250	-X-1-304-A;	68-0250)
Budget Authority		148,500	12,622
Revolving fund for certification and other services	(20-00-4311	-X-3-304-A;	68-4311)
401(C) Authority--Off. Coll.		1,500	128
Outlays		1,500	128
Hazardous substance superfund	(20-00-8145	-X-7-304-A;	20-8145)
Budget Authority		1,479,198	125,732
401(C) Authority--Off. Coll.		40,000	3,400
Obligation Limitation		147,506	12,538
Outlays		379,617	32,267



Account Title		Base	Sequester
Leaking underground storage tank trust fund	(20-00-8153	-X-7-304-A;	20-8153)
Budget Authority		52,536	4,466
Outlays		7,881	670
Environmental Protection Agency	Total		
Budget Authority		5,769,131	490,376
401(C) Authority--Off. Coll.		43,300	3,681
Direct Loan Limitation		37,357	3,175
Obligation Limitation		147,506	12,538
Outlays		1,426,253	121,231
<u>General Services Administration</u>			
<u>Real Property Activities</u>			
Federal buildings fund	(23-05-4542	-X-4-804-A;	47-4542)
401(C) Authority--Off. Coll.		12,994	1,104
Outlays		16,660	1,416
<u>Personal Property Activities</u>			
Federal supply service	(23-10-0116	-X-1-804-A;	47-0116)
Budget Authority		176,173	14,975
Outlays		160,141	13,612
Expenses of transportation audit contracts	(23-10-5246	-X-2-804-A;	47-5246)
401(C) Other--incl. ob. limit		10,929	929
Outlays		10,929	929
<u>Information Resources Management Service</u>			
Operating expenses, information resources management s	(23-15-0900	-X-1-804-A;	47-0900)
Budget Authority		31,193	2,651
Outlays		22,926	1,949
<u>Federal Property Resources Activities</u>			
Operating expenses, federal property resources service	(23-25-0533	-X-1-054-A;	47-0533)
Budget Authority		30,259	3,177
Outlays		26,901	2,825
Operating expenses, federal property resources service	(23-25-0533	-X-1-804-A;	47-0533)
Budget Authority		11,531	980
Outlays		11,531	980
National defense stockpile transaction fund	(23-25-4550	-X-3-054-A;	47-4550)
Budget Authority		10,420	1,094
Unobligated Balances--Defense		598,660	62,859
Outlays		24,249	2,546
Expenses, disposal of surplus real and related persona	(23-25-5254	-X-2-804-A;	47-5254)
401(C) Other--incl. ob. limit		3,819	325
Outlays		2,540	216
<u>General Activities</u>			
Allowances and office staff for former Presidents	(23-30-0105	-X-1-802-A;	47-0105)
Budget Authority		941	80
Outlays		851	72
Office of Inspector General	(23-30-0108	-X-1-804-A;	47-0108)
Budget Authority		23,347	1,984
Outlays		20,171	1,715
General management and administration, salaries and ex	(23-30-0110	-X-1-804-A;	47-0110)
Budget Authority		128,107	10,889
Outlays		99,027	8,417
Consumer information center fund	(23-30-4549	-X-3-376-A;	47-4549)
Budget Authority		1,339	114
401(C) Authority--Off. Coll.		382	32
Outlays		-637	-54
General Services Administration	Total		
Budget Authority		413,310	35,944
401(C) Authority--Off. Coll.		13,376	1,136
401(C) Other--incl. ob. limit		14,748	1,254
Unobligated Balances--Defense		598,660	62,859
Outlays		395,289	34,623
<u>National Aeronautics and Space Administration</u>			
<u>National Aeronautics and Space Administration</u>			
Research and program management	(26-00-0103	-X-1-250-A;	80-0103)
401(C) Authority--Off. Coll.		5,378	457
Outlays		5,378	457
Research and program management (Space flight)	(26-00-0103	-X-1-253-A;	80-0103)
Budget Authority		705,077	59,932
Outlays		665,591	56,575
Research & program management (Space science, applicat	(26-00-0103	-X-1-254-A;	80-0103)
Budget Authority		496,030	42,163
Outlays		432,901	36,797
Research & program management (Supporting space activi	(26-00-0103	-X-1-255-A;	80-0103)
Budget Authority		60,837	5,171
Outlays		54,488	4,631
Research and program management (Air transportation)	(26-00-0103	-X-1-402-A;	80-0103)
Budget Authority		286,447	24,348
Outlays		261,634	22,239
Space Flight, Control, and Data Comm.	(26-00-0105	-X-1-250-A;	80-0105)
401(C) Authority--Off. Coll.		123,977	10,538
Outlays		123,977	10,538



Account Title		Base	Sequester
Space Flight, Control, and Data Comm. (space flight)	(26-00-0105	-X-1-253-A;	80-0105)
Budget Authority		5,472,688	465,178
Outlays		3,002,950	255,251
Space Flight, Control, and Data Comm. (supporting act.	(26-00-0105	-X-1-255-A;	80-0105)
Budget Authority		899,142	76,427
Outlays		411,807	35,004
Construction of facilities (Space flight)	(26-00-0107	-X-1-253-A;	80-0107)
Budget Authority		16,985	1,444
Outlays		1,189	101
Construction of facilities (Space science, application	(26-00-0107	-X-1-254-A;	80-0107)
Budget Authority		9,795	833
Outlays		686	58
Construction of facilities (Supporting space activitie	(26-00-0107	-X-1-255-A;	80-0107)
Budget Authority		116,079	9,867
Outlays		8,127	691
Construction of facilities (Air transportation)	(26-00-0107	-X-1-402-A;	80-0107)
Budget Authority		33,552	2,852
Outlays		2,349	200
Research and development	(26-00-0108	-X-1-250-A;	80-0108)
401(C) Authority--Off. Coll.		17,249	1,466
Outlays		17,249	1,466
Research and development (Space flight)	(26-00-0108	-X-1-253-A;	80-0108)
Budget Authority		962,391	81,803
Outlays		464,835	39,511
Research and development (Space science, applications,	(26-00-0108	-X-1-254-A;	80-0108)
Budget Authority		1,908,961	162,262
Outlays		910,573	77,399
Research and development (Supporting space activities)	(26-00-0108	-X-1-255-A;	80-0108)
Budget Authority		17,818	1,515
Outlays		10,780	916
Research and development (Air transportation)	(26-00-0108	-X-1-402-A;	80-0108)
Budget Authority		416,279	35,384
Outlays		211,304	17,961
National Aeronautics and Space Administration	Total		
Budget Authority		11,402,081	969,179
401(C) Authority--Off. Coll.		146,604	12,461
Outlays		6,585,818	559,795
Office of Personnel Management			
Office of Personnel Management			
Salaries and expenses	(27-00-0100	-X-1-805-A;	24-0100)
Budget Authority		107,650	9,150
Outlays		102,249	8,691
Government payment for annuitants, employees health be	(27-00-0206	-X-1-551-A;	24-0206)
401(C) Authority		1,788,931	152,059
Revolving fund	(27-00-4571	-X-4-805-A;	24-4571)
401(C) Authority--Off. Coll.		1,319	112
Outlays		1,319	112
Civil service retirement and disability fund	(27-00-8135	-X-7-602-A;	24-8135)
Obligation Limitation		57,251	4,866
Outlays		57,201	4,862
Employees life insurance fund	(27-00-8424	-X-8-602-A;	24-8424)
Obligation Limitation		1,164	99
Outlays		1,164	99
Employees health benefits fund	(27-00-8440	-X-8-551-A;	24-8440)
Obligation Limitation		9,253	786
Outlays		9,253	786
Retired employees health benefits fund	(27-00-8445	-X-8-551-A;	24-8445)
Obligation Limitation		140	12
Outlays		140	12
Office of Personnel Management	Total		
Budget Authority		107,650	9,150
401(C) Authority		1,788,931	152,059
401(C) Authority--Off. Coll.		1,319	112
Obligation Limitation		67,808	5,763
Outlays		171,326	14,562
Small Business Administration			
Small Business Administration			
Salaries and expenses	(28-00-0100	-X-1-376-A;	73-0100)
Budget Authority		212,176	18,035
Outlays		153,139	13,017
Pollution control equipment contract guarantee revolvi	(28-00-4147	-X-3-376-A;	73-4147)
Guaranteed Loan Limitation		52,100	4,428
Disaster loan fund	(28-00-4153	-X-3-453-A;	73-4153)
Direct Loan Limitation		312,600	26,571
Outlays		140,670	11,957
Business loan and investment fund	(28-00-4154	-X-3-376-A;	73-4154)
Budget Authority		113,786	9,672
Direct Loan Limitation		101,074	8,591
Guaranteed Loan Limitation		3,898,122	331,340
Outlays		77,525	6,590



Account Title		Base	Sequester
Surety bond guarantees revolving fund	(28-00-4156	-X-3-376-A;	73-4156)
Guaranteed Loan Limitation		1,142,032	97,073
Small Business Administration	Total		
Budget Authority		325,962	27,707
Direct Loan Limitation		413,674	35,162
Guaranteed Loan Limitation		5,092,254	432,841
Outlays		371,334	31,564
Veterans Administration			
Veterans Administration			
Veterans job training	(29-00-0103	-X-1-702-A;	36-0103)
Budget Authority		31,260	2,657
Outlays		5,730	487
Construction, major projects	(29-00-0110	-X-1-703-A;	36-0110)
Budget Authority		398,857	33,903
Outlays		11,966	1,017
Construction, minor projects	(29-00-0111	-X-1-703-A;	36-0111)
Budget Authority		84,264	7,162
Outlays		42,679	3,628
Readjustment benefits	(29-00-0137	-X-1-702-A;	36-0137)
401(C) Authority		597,132	50,756
Outlays		577,600	49,096
Grants to the Republic of the Philippines	(29-00-0144	-X-1-703-A;	36-0144)
Budget Authority		521	44
Outlays		82	7
General operating expenses	(29-00-0151	-X-1-705-A;	36-0151)
Budget Authority		825,956	70,206
Outlays		764,009	64,941
Medical administration and miscellaneous operating exp	(29-00-0152	-X-1-703-A;	36-0152)
Budget Authority		44,793	3,807
Outlays		31,534	2,680
Burial benefits and miscellaneous assistance	(29-00-0155	-X-1-701-A;	36-0155)
401(C) Authority		128,476	10,920
Outlays		128,330	10,908
Medical care	(29-00-0160	-X-1-703-A;	36-0160)
Budget Authority		779,751	66,279
Outlays		732,966	62,302
VA medical care 2% split (G-R-H)	(29-00-0160	-X-1-703-G;	36-0160)
Budget Authority--Spec. Rules		189,079	189,079
401(C) Authority--Spec. Rules		618	618
Outlays		162,000	162,000
Medical and prosthetic research	(29-00-0161	-X-1-703-A;	36-0161)
Budget Authority		227,819	19,365
Outlays		197,746	16,808
Grants for construction of state extended care facilit	(29-00-0181	-X-1-703-A;	36-0181)
Budget Authority		44,181	3,755
Direct loan revolving fund	(29-00-4024	-X-3-704-A;	36-4024)
Direct Loan Limitation		1,042	89
Loan guaranty revolving fund	(29-00-4025	-X-3-704-A;	36-4025)
Guaranteed Loan Limitation		35,000,000	2,975,000
Vocational rehabilitation revolving fund	(29-00-4114	-X-3-702-A;	36-4114)
Direct Loan Limitation		938	80
Outlays		938	80
Education loan fund	(29-00-4118	-X-3-702-A;	36-4118)
Direct Loan Limitation		36	3
Outlays		36	3
Parking garage revolving fund	(29-00-4538	-X-3-703-A;	36-4538)
Budget Authority		27,092	2,303
401(C) Authority--Off. Coll.		200	17
Outlays		922	78
Veterans Administration	Total		
Budget Authority		2,464,494	209,481
Budget Authority--Spec. Rules		189,079	189,079
401(C) Authority		725,608	61,676
401(C) Authority--Off. Coll.		200	17
401(C) Authority--Spec. Rules		618	618
Direct Loan Limitation		2,016	172
Guaranteed Loan Limitation		35,000,000	2,975,000
Outlays		2,656,538	374,035
Other Independent Agencies			
ACTION			
Operating expenses	(30-01-0103	-X-1-506-A;	44-0103)
Budget Authority		164,090	13,948
Outlays		89,391	8,448
Administrative Conference of the United States			
Salaries and expenses	(30-02-1700	-X-1-751-A;	95-1700)
Budget Authority		1,595	136
Outlays		1,379	117



Account Title		Base	Sequester
<u>Advisory Committee on Federal Pay</u>			
Salaries and expenses	(30-05-1800	-X-1-805-A; 95-1800)	
Budget Authority		222	19
Outlays		218	19
<u>Advisory Council on Historic Preservation</u>			
Salaries and expenses	(30-10-2300	-X-1-303-A; 95-2300)	
Budget Authority		1,668	142
Outlays		1,602	136
<u>American Battle Monuments Commission</u>			
Salaries and expenses	(30-12-0100	-X-1-705-A; 74-0100)	
Budget Authority		15,973	1,358
Outlays		12,043	1,024
<u>Architectural &amp; Transportation Barriers Compliance</u>			
Salaries and expenses	(30-14-3200	-X-1-751-A; 95-3200)	
Budget Authority		2,046	174
Outlays		1,514	129
<u>Arms Control and Disarmament Agency</u>			
Arms control and disarmament activities	(30-17-0100	-X-1-153-A; 94-0100)	
Budget Authority		31,074	2,641
Outlays		26,412	2,245
<u>Barry Goldwater Scholarship Foundation</u>			
Payment to the Barry Goldwater Scholarship and Exc. in	(30-18-0500	-X-1-502-A; 95-0500)	
Budget Authority		41,680	3,543
Barry Goldwater Scholarship and Excellence in Educ. Fo	(30-18-8281	-X-7-502-A; 95-8281)	
401(C) Authority		2,397	204
Outlays		987	84
<u>Board for International Broadcasting</u>			
Grants and expenses	(30-19-1145	-X-1-154-A; 95-1145)	
Budget Authority		180,514	15,344
Outlays		154,520	13,134
<u>Commission of Fine Arts</u>			
Salaries and expenses	(30-32-2600	-X-1-451-A; 95-2600)	
Budget Authority		488	41
Outlays		477	41
<u>Commission on Civil Rights</u>			
Salaries and expenses	(30-35-1900	-X-1-751-A; 95-1900)	
Budget Authority		8,097	688
Outlays		6,178	525
<u>Committee for Purchase from the Blind &amp; others</u>			
Salaries and expenses	(30-37-2000	-X-1-505-A; 95-2000)	
Budget Authority		843	72
Outlays		801	68
<u>Commodity Futures Trading Commission</u>			
Commodity Futures Trading Commission	(30-38-1400	-X-1-376-A; 95-1400)	
Budget Authority		32,396	2,754
Outlays		28,189	2,396
<u>Consumer Product Safety Commission</u>			
Product safety	(30-41-0100	-X-1-554-A; 61-0100)	
Budget Authority		37,002	3,145
401(C) Authority--Off. Coll.		5	0
Outlays		31,457	2,674
<u>Corporation for Public Broadcasting</u>			
Public broadcasting fund	(30-42-0151	-X-1-503-A; 20-0151)	
401(C) Authority		214,000	18,190
Outlays		214,000	18,190
<u>District of Columbia</u>			
Federal payment to the District of Columbia	(30-43-1700	-X-1-852-A; 20-1700)	
Budget Authority		604,756	51,404
Outlays		584,756	49,704
<u>Equal Employment Opportunity Commission</u>			
Salaries and expenses	(30-46-0100	-X-1-751-A; 45-0100)	
Budget Authority		179,234	15,235
Outlays		159,718	13,576
<u>Export-Import Bank of the United States</u>			
Export-Import Bank of the United States	(30-48-4027	-X-3-155-A; 83-4027)	
Budget Authority		104,239	8,860
Direct Loan Limitation		708,560	60,228
Guaranteed Loan Limitation		11,831,910	1,005,712
Obligation Limitation		19,151	1,628
Outlays		13,886	1,180
<u>Farm Credit Administration</u>			
Revolving fund for administrative expenses	(30-52-4131	-X-3-351-A; 78-4131)	
Obligation Limitation		42,792	3,637
<u>Federal Communications Commission</u>			
Salaries and expenses	(30-60-0100	-X-1-376-A; 27-0100)	
Budget Authority		103,683	8,813
401(C) Authority--Off. Coll.		75	6
Outlays		102,198	8,687



Account Title		Base	Sequester
<u>Federal Election Commission</u>			
Salaries and expenses	(30-65-1600	-X-1-806-A;	95-1600)
Budget Authority		13,912	1,183
Outlays		12,510	1,063
<u>Federal Emergency Management Agency</u>			
Salaries and expenses (Defense-related activities)	(30-67-0100	-X-1-054-A;	58-0100)
Budget Authority		76,222	6,479
Outlays		68,600	5,831
Salaries and expenses (Disaster relief and insurance)	(30-67-0100	-X-1-453-A;	58-0100)
Budget Authority		58,821	5,000
Outlays		52,939	4,500
Emergency planning and assistance (Defense-related act)	(30-67-0101	-X-1-054-A;	58-0101)
Budget Authority		246,137	20,922
Outlays		110,761	9,415
Emergency planning and assistance (Community developme	(30-67-0101	-X-1-453-A;	58-0101)
Budget Authority		26,867	2,284
Outlays		12,090	1,028
Emergency food and shelter	(30-67-0103	-X-1-605-A;	58-0103)
Budget Authority		130,250	11,071
Outlays		130,250	11,071
National insurance development fund	(30-67-4235	-X-3-451-A;	58-4235)
401(C) Authority		220	19
Outlays		220	19
<u>Federal Labor Relations Authority</u>			
Salaries and expenses	(30-70-0100	-X-1-805-A;	54-0100)
Budget Authority		17,834	1,516
Outlays		16,418	1,396
<u>Federal Maritime Commission</u>			
Salaries and expenses	(30-72-0100	-X-1-403-A;	65-0100)
Budget Authority		12,672	1,077
Outlays		11,392	962
<u>Federal Mediation and Conciliation Service</u>			
Salaries and expenses	(30-76-0100	-X-1-505-A;	93-0100)
Budget Authority		25,650	2,180
Outlays		23,518	1,999
<u>Federal Mine Safety and Health Review Commission</u>			
Salaries and expenses	(30-79-2800	-X-1-554-A;	95-2800)
Budget Authority		4,129	351
Outlays		3,841	326
<u>Federal Trade Commission</u>			
Salaries and expenses	(30-84-0100	-X-1-376-A;	29-0100)
Budget Authority		70,844	6,022
Outlays		65,185	5,541
<u>Harry S Truman Scholarship Foundation</u>			
Harry S Truman memorial scholarship trust fund	(31-01-8296	-X-7-502-A;	95-8296)
401(C) Other--incl. ob. limit		2,113	180
Outlays		2,113	180
<u>Christopher Columbus Quincentenary Jubilee Commis</u>			
Salaries and expenses	(31-03-0800	-X-1-376-A;	76-0800)
Budget Authority		235	20
Outlays		235	20
<u>Commission on the Bicentennial of the U.S. Constit</u>			
Salaries and expenses	(31-04-0054	-X-1-806-A;	76-0054)
Budget Authority		13,967	1,187
<u>Franklin Delano Roosevelt Memorial Commission</u>			
Salaries and expenses	(31-05-0700	-X-1-806-A;	76-0700)
Budget Authority		5	0
Outlays		5	0
<u>Intelligence Community Staff</u>			
Intelligence community staff	(31-07-0400	-X-1-054-A;	95-0400)
Budget Authority		23,501	2,468
Outlays		18,312	1,923
<u>Advisory Commission on Intergovernmental Relations</u>			
Salaries and expenses	(31-08-0100	-X-1-806-A;	55-0100)
Budget Authority		1,878	160
Outlays		1,581	134
<u>Appalachian Regional Commission</u>			
Appalachian regional development programs	(31-09-0200	-X-1-452-A;	46-0200)
Budget Authority		109,539	9,311
Outlays		9,549	812
<u>Delaware River Basin Commission</u>			
Salaries and expenses	(31-10-0100	-X-1-301-A;	46-0100)
Budget Authority		201	17
Outlays		201	17
Contribution to Delaware River Basin Commission	(31-10-0102	-X-1-301-A;	46-0102)
Budget Authority		208	18
Outlays		208	18



Account Title		Base	Sequester
<u>Interstate Commission on the Potomac River Basin</u>			
Contribution to Interstate Commission on the Potomac R (31-11-0446	-X-1-304-A;	46-0446)	
Budget Authority	82	7	
Outlays	82	7	
<u>Susquehanna River Basin Commission</u>			
Salaries and expenses (31-12-0500	-X-1-301-A;	46-0500)	
Budget Authority	195	17	
Outlays	195	17	
Contribution to Susquehanna River Basin Commission (31-12-0501	-X-1-301-A;	46-0501)	
Budget Authority	250	21	
Outlays	250	21	
<u>International Trade Commission</u>			
Salaries and expenses (31-17-0100	-X-1-153-A;	34-0100)	
Budget Authority	36,681	3,118	
Outlays	32,922	2,798	
<u>Interstate Commerce Commission</u>			
Salaries and expenses (31-19-0100	-X-1-401-A;	30-0100)	
Budget Authority	51,101	4,344	
Outlays	47,577	4,044	
<u>James Madison Memorial Fellowship Foundation</u>			
James Madison Memorial Fellowship Foundation (31-20-0200	-X-1-502-A;	95-0200)	
401(C) Authority	13,200	1,122	
Outlays	13,200	1,122	
James Madison Memorial Fellowship Trust Fund (31-20-8282	-X-7-502-A;	95-8282)	
401(C) Other--incl. ob. limit	450	38	
Outlays	405	34	
<u>Japan-United States Friendship Commission</u>			
Japan-United States friendship trust fund (31-21-8025	-X-7-154-A;	95-8025)	
Budget Authority	1,476	125	
Outlays	1,476	125	
<u>Legal Services Corporation</u>			
Payment to the Legal Services Corporation (31-22-0501	-X-1-752-A;	20-0501)	
Budget Authority	318,331	27,058	
Outlays	280,191	23,816	
<u>Marine Mammal Commission</u>			
Salaries and expenses (31-23-2200	-X-1-302-A;	95-2200)	
Budget Authority	978	83	
Outlays	832	71	
<u>Merit Systems Protection Board</u>			
Salaries and expenses (31-24-0100	-X-1-805-A;	41-0100)	
Budget Authority	20,860	1,773	
Outlays	18,114	1,540	
Office of the Special Counsel (31-24-0101	-X-1-805-A;	41-0101)	
Budget Authority	4,800	408	
Outlays	4,398	374	
<u>National Archives and Records Administration</u>			
Operating expenses (31-26-0300	-X-1-804-A;	88-0300)	
Budget Authority	108,443	9,218	
Outlays	86,299	7,335	
National archives trust fund (31-26-8436	-X-8-804-A;	88-8436)	
401(C) Authority--Off. Coll.	4,343	369	
Outlays	-245	-21	
<u>National Capital Planning Commission</u>			
Salaries and expenses (31-28-2500	-X-1-451-A;	95-2500)	
Budget Authority	2,930	249	
Outlays	2,713	231	
<u>National Afro-American History and Culture Commiss</u>			
National Center for the Study of Afro-American Hist. a (31-29-3800	-X-1-503-A;	95-3800)	
Budget Authority	145	12	
Outlays	94	8	
<u>National Commission on Libraries &amp; Info. Science</u>			
Salaries and expenses (31-30-2700	-X-1-503-A;	95-2700)	
Budget Authority	717	61	
Outlays	646	55	
<u>National Council on the Handicapped</u>			
Salaries and expenses (31-32-3500	-X-1-506-A;	95-3500)	
Budget Authority	915	78	
Outlays	732	62	
<u>National Endowment for the Arts</u>			
National Endowment for the Arts: Grants and administra (31-35-0100	-X-1-503-A;	59-0100)	
Budget Authority	172,636	14,674	
Outlays	61,127	5,196	
<u>National Endowment for the Humanities</u>			
National Endowment for the Humanities: Grants and admi (31-36-0200	-X-1-503-A;	59-0200)	
Budget Authority	149,077	12,672	
Outlays	74,453	6,328	
<u>Institute of Museum Services</u>			
Institute of Museum Services (31-37-0300	-X-1-503-A;	59-0300)	
Budget Authority	22,173	1,885	
Outlays	5,505	468	



Account Title		Base	Sequester
National Institute of Building Sciences			
National Institute of Building Sciences trust fund	(31-38-8222	-X-7-376-A;	95-8222)
401(C) Other--incl. ob. limit		522	44
Outlays		500	42
National Labor Relations Board			
Salaries and expenses	(31-39-0100	-X-1-505-A;	63-0100)
Budget Authority		142,058	12,075
Outlays		133,716	11,366
National Mediation Board			
Salaries and expenses	(31-40-2400	-X-1-505-A;	95-2400)
Budget Authority		6,999	595
Outlays		5,568	473
National Science Foundation			
Research and related activities	(31-45-0100	-X-1-251-A;	49-0100)
Budget Authority		1,468,773	124,846
Outlays		667,694	56,754
Scientific activities overseas (special foreign curren	(31-45-0102	-X-1-251-A;	49-0102)
Budget Authority		729	62
Science and engineering education activities	(31-45-0106	-X-1-251-A;	49-0106)
Budget Authority		103,158	8,768
Outlays		11,724	997
U.S. Antarctic program	(31-45-0200	-X-1-251-A;	49-0200)
Budget Authority		121,914	10,363
Outlays		50,838	4,321
National Transportation Safety Board			
Salaries and expenses	(31-47-0310	-X-1-407-A;	95-0310)
Budget Authority		24,207	2,058
Outlays		21,779	1,851
Neighborhood Reinvestment Corporation			
Payment to the Neighborhood Reinvestment Corporation	(31-49-1300	-X-1-451-A;	82-1300)
Budget Authority		19,798	1,683
Outlays		19,798	1,683
Nuclear Regulatory Commission			
Salaries and expenses (NRC)	(31-50-0200	-X-1-276-A;	31-0200)
Budget Authority		428,998	36,465
Outlays		320,962	27,282
Occupational Safety and Health Review Commission			
Salaries and expenses	(32-02-2100	-X-1-554-A;	95-2100)
Budget Authority		6,275	533
Outlays		5,730	487
Pennsylvania Avenue Development Corporation			
Salaries and expenses	(32-08-0100	-X-1-451-A;	42-0100)
Budget Authority		2,598	221
Outlays		1,722	146
Public development	(32-08-0102	-X-1-451-A;	42-0102)
Budget Authority		4,089	348
Outlays		478	41
Land acquisition and development fund	(32-08-4084	-X-3-451-A;	42-4084)
401(C) Authority--Off. Coll.		14,000	1,190
Outlays		14,000	1,190
Postal Service			
Payment to the Postal Service fund	(32-10-1001	-X-1-372-A;	18-1001)
Budget Authority		677,300	57,570
Outlays		677,300	57,570
Postal Service	(32-10-4020	-X-3-372-A;	18-4020)
401(C) Authority		1,059,426	90,051
Outlays		1,140,000	96,900
Railroad Retirement Board			
Railroad social security equivalent benefit account	(32-20-8010	-X-7-601-A;	60-8010)
Obligation Limitation		30,302	2,576
Outlays		30,302	2,576
Rail Industry Pension Fund	(32-20-8011	-X-7-601-A;	60-8011)
Obligation Limitation		31,441	2,672
Outlays		30,958	2,631
Supplemental Annuity Pension Fund	(32-20-8012	-X-7-601-A;	60-8012)
401(C) Authority		119,000	10,115
Obligation Limitation		2,156	183
Outlays		116,156	9,873
Securities and Exchange Commission			
Salaries and expenses	(32-35-0100	-X-1-376-A;	50-0100)
Budget Authority		120,391	10,233
Outlays		111,392	9,468
Selective Service System			
Salaries and expenses	(32-40-0400	-X-1-054-A;	90-0400)
Budget Authority		28,309	2,972
Outlays		21,080	2,213
Smithsonian Institution			
Salaries and expenses	(32-50-0100	-X-1-503-A;	33-0100)
Budget Authority		200,355	17,030
Outlays		177,202	15,062



Account Title		Base	Sequester
Construction and improvements, National Zoological Par	(32-50-0129)	-X-1-503-A;	33-0129)
Budget Authority		2,605	221
Outlays		1,172	100
Restoration and renovation of buildings	(32-50-0132)	-X-1-503-A;	33-0132)
Budget Authority		13,520	1,149
Outlays		4,443	378
Construction	(32-50-0133)	-X-1-503-A;	33-0133)
Budget Authority		6,351	540
Outlays		2,596	221
Salaries and expenses, National Gallery of Art	(32-50-0200)	-X-1-503-A;	33-0200)
Budget Authority		37,475	3,185
Outlays		32,257	2,742
Repair, restoration, and renovation of buildings	(32-50-0201)	-X-1-503-A;	33-0201)
Budget Authority		2,503	213
Outlays		522	44
Salaries and expenses, Woodrow Wilson International Ce	(32-50-0400)	-X-1-503-A;	33-0400)
Budget Authority		3,546	301
Outlays		2,194	186
Endowment challenge fund	(32-50-8188)	-X-7-503-A;	33-8188)
401(C) Authority		175	15
Outlays		150	13
Canal Zone biological area fund	(32-50-8190)	-X-7-503-A;	33-8190)
401(C) Authority		125	11
Outlays		120	10
Other Temporary Commissions			
State Justice Institute	(33-02-0052)	-X-1-752-A;	48-0052)
Budget Authority		7,519	639
Outlays		6,475	550
Aviation Safety Commission: Salaries and expenses	(33-02-0053)	-X-1-402-A;	48-0053)
Budget Authority		2,104	179
Outlays		1,300	110
Commission on Education of the Deaf: Salaries and Expe	(33-02-0200)	-X-1-503-A;	48-0200)
Budget Authority		801	68
Outlays		435	37
Navajo and Hopi Indian Relocation Commission	(33-02-1100)	-X-1-806-A;	48-1100)
Budget Authority		23,402	1,989
Outlays		15,687	1,333
Comm. for the Study of Int. Mig. and Coop. Econ. Dev:	(33-02-1400)	-X-1-153-A;	48-1400)
Budget Authority		226	19
Outlays		177	15
National Commission to Prevent Infant Mortality	(33-02-1500)	-X-1-806-A;	48-1500)
Budget Authority		729	62
Outlays		625	53
National Council on Public Works Improvement	(33-02-1900)	-X-1-806-A;	48-1900)
Budget Authority		1,853	158
Outlays		1,482	126
Tennessee Valley Authority			
TVA fund (Energy supply)	(33-16-4110)	-X-3-271-A;	64-4110)
401(C) Authority--Off. Coll.		94,900	8,066
Outlays		94,900	8,066
TVA fund (Area and regional development)	(33-16-4110)	-X-3-452-A;	64-4110)
Budget Authority		105,558	8,972
Outlays		47,508	4,038
United States Holocaust Memorial Council			
Holocaust Memorial Council	(33-19-3300)	-X-1-806-A;	95-3300)
Budget Authority		2,184	186
Outlays		2,184	186
United States Information Agency			
Salaries and expenses	(33-22-0201)	-X-1-154-A;	67-0201)
Budget Authority		623,655	53,011
Outlays		509,524	43,310
East West Center	(33-22-0202)	-X-1-154-A;	67-0202)
Budget Authority		20,840	1,771
Outlays		20,643	1,755
Radio construction	(33-22-0204)	-X-1-154-A;	67-0204)
Budget Authority		68,780	5,846
Outlays		30,126	2,561
Radio broadcasting to Cuba	(33-22-0208)	-X-1-154-A;	67-0208)
Budget Authority		13,155	1,118
Outlays		10,326	878
Educational and cultural exchange program	(33-22-0209)	-X-1-154-A;	67-0209)
Budget Authority		151,090	12,843
Outlays		74,524	6,335
National Endowment for Democracy	(33-22-0210)	-X-1-154-A;	67-0210)
Budget Authority		15,630	1,329
Outlays		9,378	797
United States Institute of Peace			
United States Institute of Peace	(33-24-1300)	-X-1-153-A;	95-1300)
Budget Authority		683	58
Outlays		683	58



Account Title		Base	Sequester
United States Sentencing Commission			
Salaries and expenses	(33-31-0938	-X-1-752-A;	10-0938)
Budget Authority		6,208	528
Outlays		5,943	505
Other Independent Agencies	Total:		
Budget Authority		7,700,630	655,593
401(C) Authority		1,408,543	119,727
401(C) Authority--Off. Coll.		113,323	9,631
401(C) Other--incl. ob. limit		3,085	262
Direct Loan Limitation		708,560	60,228
Guaranteed Loan Limitation		11,831,910	1,005,712
Obligation Limitation		125,842	10,696
Outlays		7,044,893	599,602
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Budget Authority		373,136,296	36,263,230
Budget Authority--Spec. Rules		216,992	216,992
401(C) Authority		43,024,559	3,675,489
401(C) Authority--Off. Coll.		2,535,490	215,508
401(C) Other--incl. ob. limit		15,134,016	1,286,388
401(C) Authority--ASI		4,100	4,100
401(C) Authority--Spec. Rules		1,268,434	1,268,434
Direct Loan Limitation		28,948,328	2,460,609
Direct Loan Floor		1,081,956	91,966
Guaranteed Loan Limitation		323,738,439	27,517,767
Guaranteed Loan Floor		972,264	82,642
Obligation Limitation		12,368,396	1,051,310
Unobligated Balances--Defense		47,218,369	4,957,930
Outlays		228,246,392	22,917,281

[FR Doc. 87-24551 Filed 10-21-87; 11:28 am]

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## LIST OF PUBLIC LAWS

### Last List October 20, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws.

The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

### H.R. 797/Pub. L. 100-132

To authorize the donation of certain non-Federal lands to Gettysburg National Military Park and to require a study and report on the final development of the park. (Oct. 16, 1987; 101 Stat. 807; 1 page) Price: \$1.00

### H.R. 1205/Pub. L. 100-133

To direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Putnam County, Florida, and to direct the Secretary of the Interior to convey certain mineral interests of the United States in such land to the State of Florida. (Oct. 16, 1987; 101 Stat. 808; 2 pages) Price: \$1.00

### H.R. 2035/Pub. L. 100-134

To amend the Act establishing Lowell National Historical Park, and for other purposes. (Oct. 16, 1987; 101 Stat. 810; 1 page) Price: \$1.00



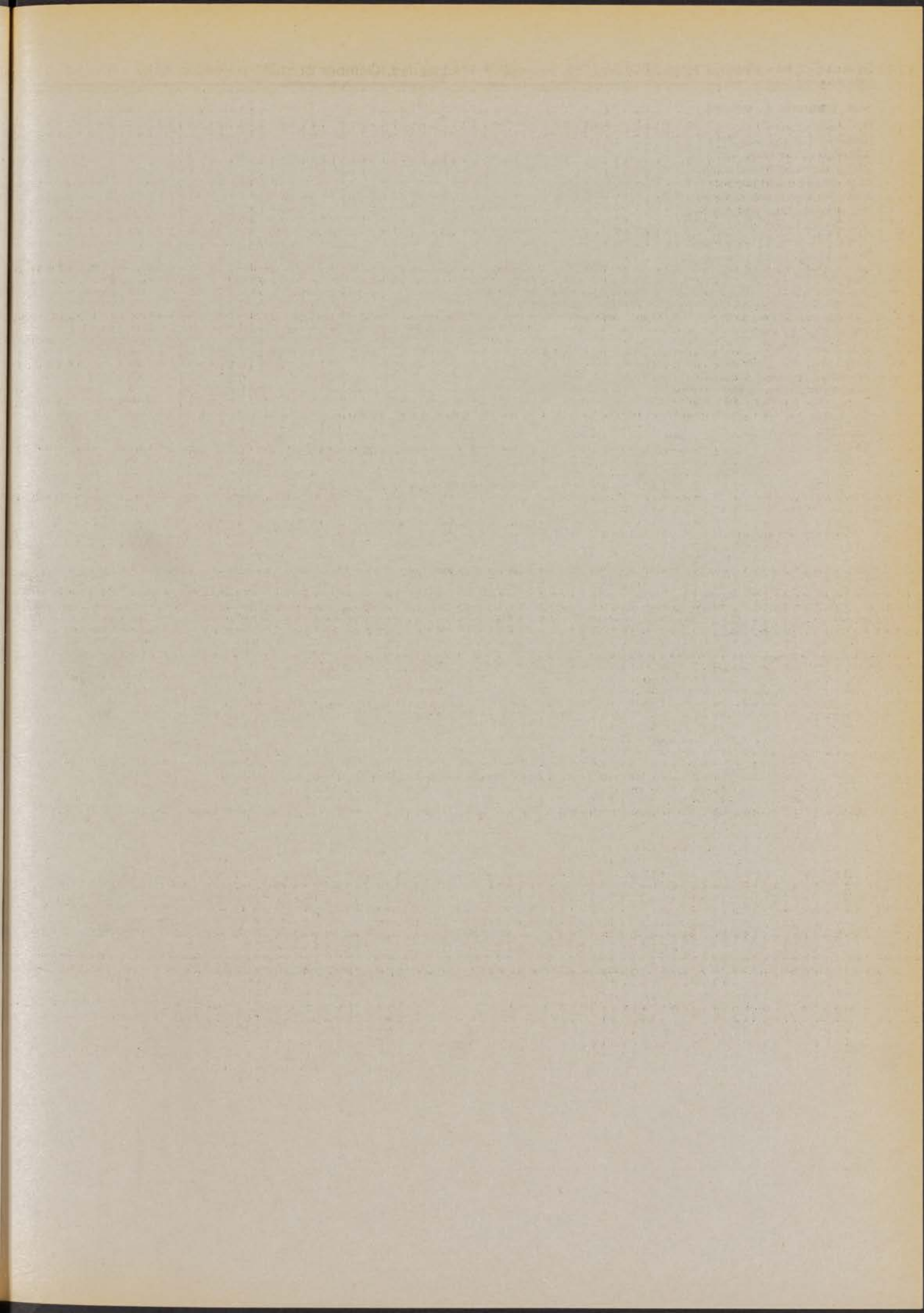
**H.R. 2249/Pub. L. 100-135**

To change the title of employees designated by the Librarian of Congress for police duty and to make the rank structure and pay for such employees the same as the rank structure and pay for the Capitol Police. (Oct. 16, 1987; 101 Stat. 811; 2 pages) Price: \$1.00

**S. 1691/Pub. L. 100-136**

To provide interim extensions of collection of the Veterans' Administration housing loan fee and of the formula for determining whether, upon foreclosure, the Veterans' Administration shall acquire the property securing a guaranteed loan, and for other purposes. (Oct. 16, 1987; 101 Stat. 813; 1 page) Price: \$1.00

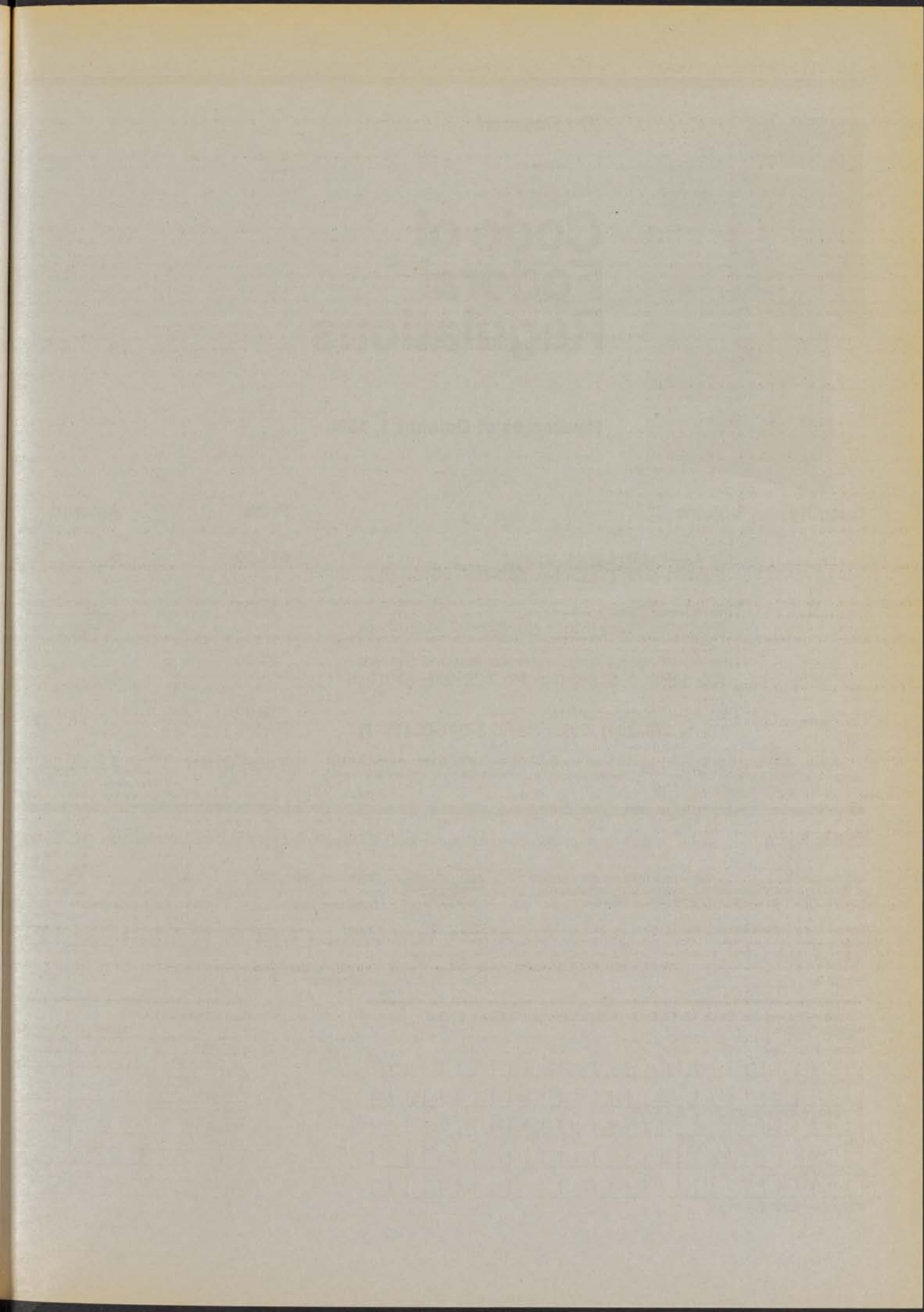






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